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MICHAEL RODAK, J

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974
No. 74-22

IVAN ALLEN COMPANY,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 26, 1974
CERTIORARI GRANTED DECEMBER 16, 1974

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DOCKET ENTRIES

May 14, 1971 Complaint with Exhibits A, B, C, & D, filed. Summons issued and delivered to U.S. Marshal.

May 17, 1971 Marshal's return on ser. executed 5-17-71 as to U.S. Atty. & executed 5-17-71 via Cert. mail as to Atty. Gen., filed.

July 15, 1971 ANSWER of def. with DEMAND for a jury trial, filed.

Aug. 26, 1971 Deft's interrogs. to pltf., filed.

Sep. 21, 1971 4 Month Notice sent to counsel.

Oct. 13, 1971 Def.'s Response to 4 month notice (letter), filed. TO RMS

Oct. 15, 1971 Pltf's. Response to 4 month notice (letter) with 2 attachment, filed. To RMS.

Nov. 12, 1971 Pltf's Answers to Defts. Interrogs., with attachments, filed.

Dec. 23, 1971 Notice to counsel requesting PT order by 1-31-72. (per CAM)

Feb. 3, 1972 Counsel advised PTO now due 3-1-72 (counsel advised ct. settlement possible).

Feb. 11, 1972 Set for jury trial on cal. commencing 3-13-72. Counsel advised.

Feb. 23, 1972 Ext. to 4-1-72 by CAM for submitting prop. PTO. Off cal. 3-13-72. Counsel advised.

Mar. 14, 1972 Request for production of documents under Rule 34, filed.

Mar. 28, 1972 Consent Order extending time thru 4-20-72 for a Consolidated Pre-Trial Order to be filed, filed. (Copy to counsel – 3/28/72)

Apr. 19, 1972 Deft's response to pltf's request for production of documents, filed.

Apr. 20, 1972 Proposed Consolidated Pre-Trial Order, Rec'd. TO RMS

Apr. 27, 1972 Deft's certificate as to production, with documents, attached, filed.

May 4, 1972 Pltf's motion for Order compelling discovery under Rule 37 with attachment, filed. To CAM.

Pltf's memo of points & Authorities in support of motion, filed. To CAM.

May 18, 1972 SUBMITTED ON PLTFS' MOTION FOR ORDER COMPELLING DISCOVERY UNDER RULE 37.

May 22, 1972 Defts. opposition to pltfs' motion for order compelling discovery under Rule 37 with memorandum of points & authorities & exhibits "A" thru "D", filed. To CAM.

May 24, 1972 Set for jury trial on cal. commencing 6-19-72 at 10 a.m. Notice to counsel.

June 8, 1972 ORDER on motion to compell discovery that Ct. having been informed the prtys. have entered into a stipulation . . . which may render moot plf.'s motion . . . ruling deferred pending action by the Ct. on said stipulation, filed. (c. counsel)

June 12, 1972 Stipulation with Exhibits A & B, filed.

SUBMITTED PURSUANT TO ORDER OF JUNE 8, 1972 and STIPULATION FILED THIS DAY.

June 14, 1972 Case removed from trial cal. for 6-19-72; Counsel to file briefs as follows: Pltf's. – due 7-12-72, Deft's. reply – due 8-1-72 and Pltf's rebuttal – due 8-11-72.

FILE RETURNED – RESUBMIT AFTER 8/11/72. (see note in file)

July 12, 1972 Brief on behalf of taxpayer, Ivan Allen Co., with Exh. A & B, filed.

July 31, 1972 Trial brief for the deft., filed.

Aug. 11, 1972 Reply brief on behalf of taxpayer Ivan Allen Company, filed.

Aug. 15, 1972 RESUBMITTED PURSUANT TO ENTRY OF JUNE 8, 1972 AND STIPULATION FILED 6/12/72.

Oct. 6, 1972 ORDER filed directing the Government to refund all accumulated earnings taxes, including interest thereon, collected for the taxpayer's fiscal years ending June 30, 1965 and June 30, 1966. Copy to counsel.

Oct. 18, 1972 Stipulation, filed. To CAM for approval.

Oct. 26, 1972 ORDER approving above stipulation & dismissing issue (Par. 1), deft. has refunded to pltf. the interest in question, filed. Copy to counsel.

Dec. 18, 1972 set for non-jury trial 1-8-73, counsel notified.

Feb. 9, 1973 set for non-jury trial 2-12-73, counsel notified.

May 3, 1973 Stipulation, with approval of Court that the "salary issues" involved be dismissed with prejudice, each party to bear its own costs with respect thereto, filed. Copies furnished.

JUDGMENT filed & entered that the pltf. recover from the deft. the sum of $150,515.85 in accumulated earnings tax paid to the deft. for the taxable years ended June 30, 1965, and June 30, 1966, plus int. thereon as provided by law & that the pltf. recover its taxable costs from the deft. to the extent such costs are attributable to the issue relating to the accumulated earnings tax involved. Copies furn.

June 28, 1973 Defendant's Notice of Appeal, filed. (c. counsel & USCA w.d.s.)

August 2, 1973 RECORD MAILED ON APPEAL TO USCA. (ACK 1of2)

May 29, 1974 Certified Copy of Judgment from USCA REVERSING AND REMANDING The judgment of the U. S. District Court for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of shareholders in accordance with the opinion of USCA & directing that pltf-appellee pay to the deft-appellant the costs on appeal to be taxed by USCA, with copy of Bill of costs in the amount of $199.20, with opinion rec'd. (TO CAM) (w/file)

June 11, 1974 ORDER making mandate the judgment of the U.S. District Court, filed. Mandate, filed.

Bill of costs taxed in U.S.C.A. against pltf. in sum of 199.20, filed.

Notice to all counsel in compliance with Local Rule 141.4.

Oct. 8, 1974 Notice to counsel requesting consolidated proposed PTO by 11-1-74.

Oct. 15, 1974 Notice to counsel setting for non-jury trial 11-4-74.

Oct. 23, 1974 ORDER removing this action from 11/4/74, trial calendar and CONTINUING same pending the decision of the Supreme Court on pltf's petition for writ of certiorari; and counsel for pltf shall notify court upon receipt of notice of the Supreme Court's ruling, filed. (Copy counsel 10/25/74)

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 15130

IVAN ALLEN COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

(Filed May 11, 1971)

COMES NOW IVAN ALLEN COMPANY, plaintiff, and brings this action against the UNITED STATES OF AMERICA, defendant, and respectfully shows:

1.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1346(a)(1). This action is a civil action against the United States of America, for the recovery of internal revenue taxes erroneously and illegally assessed against and collected from the said Ivan Allen Company for its two taxable years beginning July 1, 1964 and ending June 30, 1965 and beginning July 1, 1965 and ending June 30, 1966.

2.

The plaintiff, Ivan Allen Company, (hereinafter referred to as "Taxpayer"), is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Atlanta, Fulton County, Georgia, within the Atlanta Division of the Northern District of Georgia.

3.

Taxpayer's claim is for the recovery of $18,752.27 in principal amount of income taxes and $150,515.85 in principal amount of accumulated earnings taxes with the interest assessed thereon, all of which were erroneously and illegally assessed against and collected from Taxpayer by the Secretary of the Treasury or his delegate for the taxable years of Taxpayer ended June 30, 1965 and June 30, 1966, respectively.

4.

In each of the taxable years in question, Taxpayer kept its books and prepared its Federal income tax returns on the accrual basis of accounting. Taxpayer filed its return for each of the said taxable years and paid the tax shown as due thereon to the District Director of Internal Revenue Atlanta, Georgia.

5.

Upon audit of Taxpayer's returns for the taxable years in question, the Secretary of the Treasury or his delegate determined, but Taxpayer denies, that the salaries which Taxpayer paid Mr. Ivan Allen, Sr. and Mr. Ivan Allen, Jr. constituted unreasonable compensation and could not therefore be deducted as ordinary and necessary business expenses under Int. Rev. Code §162(a). The said Secretary or his delegate further determined, but Taxpayer denies, that Taxpayer had permitted its earnings and profits to accumulate beyond the reasonable needs of its business and that Taxpayer had been formed or availed of for the purpose of avoiding the income tax with respect to its shareholders by permitting its earnings and profits to accumulate instead of being divided or distributed within the meaning of Int. Rev. Code §532.

6.

As a result of the determinations set out in Paragraph 5 above, the Secretary of the Treasury or his delegate assessed additional income and accumulated earnings taxes against Taxpayer in the aggregate amount of $87,743.32 for the taxable year 1965 and in the aggregate amount of $81,520.80 for the taxable year 1966. Interest on said additional income and accumulated earnings taxes was also assessed against Taxpayer by the said Secretary or his delegate in the aggregate amount of $24,755.63 for the taxable year 1965 and in the aggregate amount of $18,108.78 for the taxable year 1966.

7.

Taxpayer paid said additional income and accumulated earnings taxes to the Director of the Internal Revenue Service Center, Chamblee, Georgia on or about June 1, 1970 and paid the interest on said additional income and accumulated earnings taxes to the said Director on or about November 20, 1970.

8.

On or about October 19, 1970, within the time provided by law, Taxpayer duly filed Claims for Refund of the said amounts of additional income and accumulated earnings taxes assessed against and collected from Taxpayer. On or about January 4, 1971, within the time provided by law, Taxpayer duly filed an amendment to the said Claims for Refund to include a claim for the refund of the interest assessed against and collected from Taxpayer on said amounts of additional income and accumulated earnings taxes. No decision has been rendered on the said Claims for Refund, as amended, by the Secretary of the Treasury or his delegate, and more than six months

prior to the filing of this suit have expired from the date on which the said Claims for Refund were filed.

9.

Copies of the said Claims for Refund for the taxable years in question and the amendments thereto are attached hereto, made a part hereof, and marked Exhibits A through D, respectively. Taxpayer incorporates herein each and every allegation of fact and each and every contention set out in the said Claims for Refund and amendments thereto.

10.

For the reasons stated in Taxpayer's Claims for Refund, said additional income and accumulated earnings taxes and the interest thereon were erroneously and illegally assessed against and collected from Taxpayer by the Secretary of the Treasury or his delegate.

11.

No part of the aforesaid $18,752.27 of additional income taxes nor any part of the aforesaid $150,515.85 of accumulated earnings taxes nor any part of the interest thereon erroneously and illegally assessed against and collected from Taxpayer by the Secretary of the Treasury or his delegate for the taxable years in question has been refunded to Taxpayer.

12.

By virtue of the aforesaid, the defendant United States of America became and now is indebted to Taxpayer in the full amount of $212,132.53 with interest thereon as provided by law.

13.

Taxpayer seeks refund herein of said additional income and accumulated earnings taxes and the interest thereon erroneously and illegally assessed against and collected from Taxpayer, with interest thereon from the dates of payment as provided by law, or such greater amount as may be legally refundable.

14.

Taxpayer has complied with all conditions precedent to the bringing of this suit.

WHEREFORE, Taxpayer prays that judgment be entered in its favor in the amount of $212,132.53 with interest thereon as provided by law, or in such greater amount as may be legally refundable, that the Court grant such other relief as it may deem proper, and that Taxpayer be awarded its costs.

King & Spalding
/s/ Kirk A. McAlpin
/s/ Stanley W. Rosenkranz
/s/ Herschel M. Bloom
Attorneys for the Plaintiff
Ivan Allen Company

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303

404/577-5350

POOR COPY

Exhibit A

Form 843
(Rev. July 1965)

CLAIM

To FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Date filed
(Date received)

The District Director will indicate in the block below the kind of claim filed, and fill in, where required

- [ ] Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- [ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- [ ] Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps

Ivan Allen Company

Number and street

P.O. Box 1712

City, town, State, Postal ZIP Code

Atlanta, Georgia 30301

Fill in applicable items.—Attach letter size sheets if space is not sufficient

a. Your social security number

Wife's number, if joint return

b. If an employer, enter employer identification number

58-0136820

c. District in which return (if any) was filed

Dis. Dir. Ga.

d. Name and address shown on return, if different from above

same

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year

From July 1, 1964 To June 30, 1965

f. Kind of tax

Income

g. Amount of assessment

$252,127.62

Dates of payment

$885.00: 10/15/64; $885.00: 12/15/64; $22,125.00:4/15/65; $22.125.00:6/15/65; $60,000:9/2/65 $54,318.95:12/17/65; $91,788.67:6/1/70

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)

$ 87,747.32

$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached Statement

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	47,020.00
2. Estimated tax paid	114,318.95
3. Tax paid with original return	91,788.67
4. Any additional income tax paid	252,127.62
5. Total tax paid (Add lines 1–4)	164,380.30
6. Less: Your computation of correct tax	87,747.32*
7. Amount of overpayment	-0-
8. Amount previously refunded	87,747.32*
9. Net overpayment (Enter in item i above)	

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed .....

Dated ....., 19.....

SEE INSTRUCTIONS ON REVERSE

FORM 843 (Rev. 7-65)

*Or such greater amount as may be legally refundable.

STATEMENT ATTACHED TO AND FORMING A PART OF THE CLAIM OF IVAN ALLEN COMPANY FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 1965

I. *Salary Paid by Taxpayer to Ivan Allen, Sr.*

A. *Statement of Facts*

During the taxable year in question and during all the years of its existence, Ivan Allen Company (hereinafter referred to as "Taxpayer"), was engaged in the office supply business.

Taxpayer was founded in 1899 by Mr. Ivan Allen, Sr. and Mr. J. W. Fielder. At that time, the office supply business was unique, and Ivan Allen, Sr. may well have been its originator. He was undoubtedly the first in the southeast to visualize the idea of a department store of office equipment.

The business prospered in the early 1900's, and in 1920, Mr. Allen, Sr. was elected President of Taxpayer. In 1938 he became Chairman of Taxpayer's Board of Directors and served in this position until his death.

During a substantial portion of the period in which he served Taxpayer as President and Chairman of its Board of Directors, Mr. Allen, Sr. had the primary responsibility for the management and supervision of Taxpayer's business and was undoubtedly the major factor in its success and growth. Moreover, Mr. Allen, Sr. was responsible for a number of innovations in the office supply business, all of which contributed to Taxpayer's success. He originated an inventory control plan, which for years has been the most widely used plan in the business. With minor improvements, both the standard accounting forms and cost of doing business forms which Mr. Allen, Sr.

developed are still being used. He developed the quintuplet charge and billing system whereby the invoice, charge, delivery ticket, statistical record and salesman's slip are all made in one operation. Finally, Mr. Allen, Sr. was the first to capitalize on the use of "visual education" in the business. Indeed, as early as 1923, he suggested using films to demonstrate the various manufacturing processes and facilities connected with the stationer's industry.

Mr. Allen, Sr. was not only a successful businessman but also took an active part in numerous civic activities. He served as President of the Atlanta Chamber of Commerce, as President of the Southeastern Fair Association and was the first President of the Atlanta Convention Bureau. He served as a member of a small committee which raised the first substantial funds for the Atlanta area Boy Scouts and for many years served on the Executive Committee of the Council of Boy Scouts. Mr. Allen, Sr. was one of the original members of the Agriculture and Industrial Development Board of Georgia. He served as Chairman of the Forward Atlanta Commission, of the Fulton County Department of Public Welfare, and of a Committee which raised funds to reestablish Oglethorpe University. Finally, Mr. Allen, Sr.'s close relationship with President Franklin D. Roosevelt led to his appointment as Chairman of the Federal Home Loan Bank in the southeast and as Chairman of the Franklin D. Roosevelt Warm Springs Memorial Commission.

Thus, while Mr. Allen, Sr. was implementing the many innovations in the office supply business which he had developed, he was also engaged in various civic activities which drew attention to and created respect for both Taxpayer and Mr. Allen, Sr. It was this combination of Mr. Allen, Sr.'s business acumen and his various civic activities which led to Taxpayer's growth into a highly successful company.

Notwithstanding Mr. Allen, Sr.'s role in Taxpayer's success, his salary was always extremely modest. Indeed, throughout his years of service to Taxpayer, Mr. Allen, Sr. was paid a salary which was always less than Taxpayer's leading salesman, and frequently less than several of Taxpayer's salesmen.

In 1964, Mr. Allen, Sr. suffered a stroke which curtailed his activities with Taxpayer. At that time, he had served Taxpayer for more than 64 years, always at a very modest salary. Even after his sickness, however, Mr. Allen, Sr. continued to serve Taxpayer in a consulting capacity. In consideration of his services as a consultant and for the many years of service in which he was the major factor in Taxpayer's development, Taxpayer continued to pay him the very modest annual salary of $12,525.16.

Taxpayer deducted the amount of the salary which it paid to Mr. Allen, Sr. as an ordinary and necessary business expense for its taxable year 1965. The Commissioner determined, however, that the amount paid to Mr. Allen, Sr. constituted unreasonable compensation and that the payment should not therefore have been deducted. Accordingly, the Commissioner assessed a deficiency against Taxpayer for its taxable year 1965.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The amount which Taxpayer paid to Mr. Ivan Allen, Sr. constituted a reasonable salary for both past and present personal services actually rendered to Taxpayer within the meaning of Int. Rev. Code §162(a)(1).

The amount which Taxpayer paid to Mr. Allen, Sr. was, therefore, an ordinary and necessary business expense within the meaning of Int. Rev. Code §162(a).

(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Sr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

II. *Salary Paid by Taxpayer to Ivan Allen, Jr.*

A. *Statement of Facts*

Ivan Allen, Jr. was employed by Taxpayer in 1933. In 1938 he became Secretary-Treasurer of Taxpayer. In 1946 he was elected President of Taxpayer and in 1957 became Vice Chairman of Taxpayer's Board of Directors.

In 1962, Mr. Allen, Jr. was elected Mayor of the City of Atlanta and served in this capacity during the taxable year in question. Although his duties as Mayor limited the time which Mr. Allen, Jr. was able to spend on Taxpayer's routine matters, he continued to serve as Taxpayer's chief policy maker. For example, Mr. Allen, Jr. continued to receive daily communications with respect to the business problems confronting Taxpayer and often made daily responses. He continued to review all internal financial reports, including inventory and sales data, and was in frequent consultation with Taxpayer's officers with respect to merchandising lines, sales, personnel matters, inventory, accounting, and market extension. Mr. Allen, Jr. continued to determine both Taxpayer's sales policies and the character of its advertising and promotional operations. He also continued his primary decision making role with respect to Taxpayer's major expenditures, including

not only capital expenditures but also contributions to the Ivan Allen Company Foundation and to Taxpayer's profit sharing plan. In short, Taxpayer made no policy decision of any significance during the taxable year in question without first obtaining the advice and approval of Mr. Allen, Jr.

Even prior to becoming Mayor of Atlanta, Mr. Allen, Jr., like his father, contributed to Taxpayer's success by spending at least one-half of his working time engaged in civic and outside business activities. Nevertheless, Taxpayer's success during these years clearly attest to Mr. Allen, Jr.'s ability to operate Taxpayer while spending a substantial portion of his time engaged in activities other than the management and supervision of Taxpayer's affairs.

In 1948, Taxpayer paid Mr. Allen, Jr. a very modest salary of $12,000. As his responsibility and value to Taxpayer grew, Mr. Allen, Jr.'s salary was increased to $30,000. When Mr. Allen, Jr. became Mayor of Atlanta, however, Taxpayer recognized that the amount of time that he could spend on its affairs would be curtailed. Accordingly, beginning in 1962 and including the taxable year in question, Taxpayer reduced Mr. Allen's salary to $15,025.08.

During the taxable year 1965, Taxpayer paid its president, Mr. W. H. Glenn, a salary of $31,000, approximately double that of Mr. Allen, Jr. In the same year, nine of Taxpayer's salesmen received salaries greater than that of Mr. Allen, Jr.

Taxpayer deducted the amount of the salary which it paid to Mr. Allen, Jr. as an ordinary and necessary business expense for its taxable year 1965. The Commissioner determined, however, that the amount paid to Mr. Allen, Jr. constituted unreasonable compensation and that

the payment was not therefore deductible. Accordingly, the Commissioner assessed a deficiency against Taxpayer for its taxable year 1965.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The amount which Taxpayer paid to Mr. Allen, Jr. constituted a reasonable salary for personal services actually rendered to Taxpayer within the meaning of Int. Rev. Code §162(a)(1). The amount which Taxpayer paid to Mr. Allen, Jr. was, therefore, an ordinary and necessary business expense within the meaning of Int. Rev. Code §162(a).

(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Jr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

III. *Accumulated Earnings Tax*

A. *Statement of Facts*

Taxpayer's shareholders as of June 30, 1965 were as follows:

	No. of Shares
Allen, Beaumont	925
Allen, Hugh Inman	2615
Allen, Irene Beaumont	2265
Allen, Ivan Sr.	5650
Allen, Ivan Jr.	4580

Allen, Ivan Jr. Trustee U/W Charles M. Marshall	9650
Allen, Ivan III	2365
Allen, Ivan IV	110
Allen, Louise R.	2115
Allen, Margaret Poer	91
Ball, Jack T.	20
Brumbelow, Morris	10
Carnes, John	850
Dickerson, Elmer	300
Estes, Robert S.	40
Floyd, W. F. Jr.	515
Glenn, W. H.	2400
Hampton, James F.	25
Harris, Andrew D.	2
Harris, Grady W.	2
Harris, W. D.	475
Jones, Hayden C. Jr.	575
Lanier, D. B.	100
Layton, Estate of Charles R.	75
Murphy, J. H.	754
Ownby, O. G.	130
Ownby, O. G. Trustee for Roger Paul	10
Ownby, O. G. Trustee for Scott Alan	10
Patrick, James H.	25
Pettes, Thompson P.	25
Richardson, Walter	20
Snellings, Walter Arnold	22
Tebow, D. L.	200
Williams, J. C.	500
Wilson, S. W.	75
Winslow, T. E.	160
Total	37686

As an operating company, Taxpayer has a readily ascertainable operating cycle and a need for sufficient working capital to operate its business through at least one such cycle. Since Taxpayer's net liquid assets determined as of the end of the taxable year in question which were available for use in meeting its working capital requirements were less than its needs, Taxpayer retained a portion of its earnings and profits for the taxable year.

For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management viewed the securities as business investments which were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities are included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year.

Taxpayer does not have a history of making loans to its shareholders and possesses a record of regular and substantial dividends. Moreover, the income tax consequences to Taxpayer's shareholders have never been considered in determining its dividend policy.

Taxpayer's ratio of current assets to current liabilities for the taxable year in question was extremely small. Indeed, only a very insignificant amount of Taxpayer's

earnings and profits has ever been invested in assets other than assets directly related to the operation of Taxpayer's business.

Nevertheless, the Commissioner determined that Taxpayer had accumulated earnings beyond the reasonable needs of its business and that this accumulation was for the purpose of avoiding the income tax with respect to its shareholders. Accordingly, the Commissioner assessed an accumulated earnings tax deficiency against Taxpayer for its taxable year 1965.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency with interest thereon as provided by law, or such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The marketable securities which Taxpayer held and which had substantially appreciated in value were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. For this reason, the marketable securities are excludable in computing Taxpayer's net liquid assets available for use in its business. The cost of one of Taxpayer's operating cycles for the taxable year in question thus exceeded its net liquid assets available for use in its business determined as of the end of the taxable year. Consequently, Taxpayer's earnings and profits for the taxable year in question which it retained were not in excess of and were retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business, within the meaning of Int. Rev. Code §535(c). Accordingly, in computing its accumulated taxable income under Int. Rev. Code §535, Taxpayer is entitled to an accumulated earnings credit in an amount at least equal

to the amount of its retained earnings and profits for the taxable year in question (or in such lesser amount of its earning and profits for the taxable year in question as may be determined to have been retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business.)

(2) Even if the marketable securities held by Taxpayer are includable in computing Taxpayer's net liquid assets available for use in its business, which Taxpayer denies, the cost of one of Taxpayer's operating cycles for the taxable year in question still exceeded its net liquid assets determined as of the end of the taxable year. Consequently, Taxpayer's earnings and profits for the taxable year in question which it retained were not, in excess of and were retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business, within the meaning of Int. Rev. Code §535(c). Accordingly, in computing its accumulated taxable income under Int. Rev. Code §535, Taxpayer is entitled to an accumulated earnings credit in an amount at least equal to the amount of its retained earning and profits for the taxable year in question (or in such lesser amount of its earnings and profits for the taxable year in question as may be determined to have been retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business.)

(3) Even if the earnings and profits which Taxpayer retained exceeded the reasonable needs of its business, including the reasonably anticipated needs of its business, which Taxpayer denies, such excess was not accumulated by Taxpayer for the purpose of avoiding the income tax with respect to its shareholders. Taxpayer was not, therefore, formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the

shareholders of any other corporation by permitting its earnings and profits to accumulate instead of being divided and distributed within the meaning of Int. Rev. Code §532(a).

(4) Under any of the alternative contentions stated above, Taxpayer is not subject to an accumulated earnings tax liability under Int. Rev. Code §531 for the taxable year in question. Accordingly, the accumulated earnings tax deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

Exhibit B

Form 843 (Rev. Nov. 1968)
Department of the Treasury
Internal Revenue Service

AMENDED Claim FOR REFUND

Director's Stamp (Date received)

The Internal Revenue Service will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to income, estate or gift taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps
IVAN ALLEN COMPANY

Number and street
P. O. Box 1712

City or town, State, and ZIP code
Atlanta, Georgia 30301

Fill in applicable items—Use attachments if necessary

a. Your social security number

Wife's number, if joint return

b. Employer identification number (if any)
58-0136820

Internal Revenue Service office where return (if any) was filed
Dist. Dir. Georgia

d. Name and address shown on return, if different from above
same

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From July 1, 19 64, to June 30, 19 65

f. Kind of tax
Income

g. Amount of assessment
$ 252,127.62

Dates of payment $885.00: 10/15/64; $885.00: 12/15/64; $93,175.00: 3/15/65; $22,125.00: 6/15/65; $60,000: 9/2/65; $54,318.95: 12/17/65; $91,788.67: 6/1/70

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)
$ 87,747.32*

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached Statement

COMPUTATION OF INCOME TAX REFUND	Income Tax
1 Tax withheld	46,020.00
2 Estimated tax paid	114,318.95
3 Tax paid with original return	91,788.67
4 Any additional income tax paid	252,127.62
5 Total tax paid (add lines 1–4)	164,380.30
6 Less: Your computation of correct tax	87,747.32*
7 Amount of overpayment	-0-
8 Amount previously refunded	87,747.32*
9 Net overpayment (enter in item i above)	

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed .....

Dated ....., 19.....

SEE INSTRUCTIONS ON REVERSE

Form 843 (Rev. 11-69)

*Plus assessed interest, with interest thereon as provided by law, or such greater amount as may be legally refundable.

STATEMENT AMENDING IVAN ALLEN COMPANY'S CLAIM FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 7/1/64-6/30/65

On October 19, 1970, Ivan Allen Company (hereinafter referred to as "Taxpayer") filed a Claim For Refund ("Claim") of income and accumulated earnings taxes paid for its taxable year 1965. This statement is filed to amend Taxpayer's previously filed Claim as follows:

(1) The Form 843 previously filed by Taxpayer is hereby amended in accordance with the Form 843 attached hereto and styled "Amended Claim for Refund."

(2) The "STATEMENT ATTACHED TO AND FORMING A PART OF THE CLAIM OF IVAN ALLEN COMPANY FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 1965" is hereby amended as follows:

(a) PAGE 4, SECOND FULL PARAGRAPH, which reads:

> "Taxpayer has paid the deficiency. This claim is filed for refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

> "Taxpayer has paid the deficiency *with interest thereon.* This claim is filed for the refund of the deficiency *and interest* so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

(b) PAGE 4, CONTENTION (2) is hereby amended to read as follows (changes italicized):

> "(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Sr. was properly deducted by taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency *and interest thereon* assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund."

(c) PAGE 7, THIRD PARAGRAPH, which reads:

> "Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

> "Taxpayer has paid the deficiency *with interest thereon.* This claim is filed for the refund of the deficiency *and interest* so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

(d) PAGE 8, CONTENTION (2) is hereby amended to read as follows (changes italicized):

> "(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Jr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency *and interest thereon* assessed against

and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

(e) PAGE 10, SECOND PARAGRAPH, which reads:

"For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management viewed the securities as business investments which were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities are included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year."

is hereby amended to read as follows (changes italicized):

"For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities

had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management *did not view* the securities *as a part of Taxpayer's net liquid assets. Rather, the securities were viewed as long-term* business investments which were *neither* available for use in meeting Taxpayer's reasonable business needs *nor generally available* for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities are included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year."

(f) PAGE 11, FOURTH PARAGRAPH, which reads:

"Taxpayer has paid the deficiency. This claim is filed for refund of the deficiency with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

"Taxpayer has paid the deficiency *with interest thereon. The deficiency was paid within ten days of the receipt of notice and demand issued in connection therewith.* This claim is filed for the refund of the deficiency *and interest so paid* with interest thereon as provided by law, or such greater amount as may be legally refundable."

(g) PAGE 11, CONTENTION (1), FIRST SENTENCE is hereby amended to read as follows (changes italicized):

> "(1) The marketable securities which Taxpayer held and which had substantially appreciated in value were *neither* available for use in meeting Taxpayer's reasonable business needs *nor generally available* for distribution to its shareholders."

(h) PAGE 14, CONTENTION (4), is hereby amended to read as follows (changes italicized):

> "(4) Under any of the alternative contentions stated above, Taxpayer is not subject to an accumulated earnings tax liability under Int. Rev. Code §531 for the taxable year in question. Accordingly, the accumulated earnings tax deficiency *and interest thereon* assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund."

(i) PAGE 14 is hereby amended to add the following contentions (5), (6) and (7) with respect to the interest paid by Taxpayer on the accumulated earnings tax assessed against it:

> "(5) The accumulated earnings tax imposed by Int. Rev. Code §531 is not a "tax" within the meaning of Int. Rev. Code §6601(a). Rather, it is either an "assessable penalty, additional amount or addition to the tax" within the meaning of Int. Rev. Code §6601 (f) (3). Interest on such a penalty, additional amount, or addition to the tax can be imposed only if it is not paid within ten days from the

date of notice and demand. Taxpayer paid the accumulated earnings tax deficiency assessed against it within ten days of the receipt of notice and demand. Accordingly, even if an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, Taxpayer is not liable for any interest on such tax."

"(6) Even if the accumulated earnings tax is a 'tax' within the meaning of Int. Rev. Code §6601(a), which Taxpayer denies, by virtue of Int. Rev. Code §6155, the 'last date prescribed for payment' of such tax under Int. Rev. Code §6601(a) is the date of notice and demand. Interest can therefore be imposed on an accumulated earnings tax deficiency only from the date of notice and demand to the date of payment, unless payment is made within ten days of notice and demand in which case Int. Rev. Code §6601 (f) (4) precludes the imposition of any interest. Taxpayer paid the accumulated earnings tax assessed against it within ten days of the receipt of notice and demand. Consequently, even if an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, Taxpayer is not liable for any interest on such tax."

"(7) Under either of the alternative contentions (5) or (6) stated above, Taxpayer is not liable for any interest on the accumulated earnings tax assessed against it for the taxable year in question. Accordingly, even if

an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, the interest assessed against and paid by Taxpayer with respect to such tax constitutes an overpayment for which Taxpayer is entitled to a refund.

Exhibit C

CLAIM

1. FILED WITH THE DISTRICT DIRECTOR WHO ASSESSED THE TAX OR TAX PAID

Date

Note: If you are claiming more than one refund, use a separate form for each refund.

[ ] Refund of Taxes Illegally, Erroneously, or Excessively Collected.

[ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

[ ] Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps

IVAN ALLEN COMPANY

Number and street

P.O. Box 1712

City, town, State, Postal ZIP Code

Atlanta, Georgia 30301

Fill in applicable items—Attach letter size sheets if space is not sufficient

a. Your social security number | Wife's number, if joint return | b. If an employer, enter employer identification number

58-0136820

c. District in which return (if any) was filed

Dis. Dir. Georgia

d. Name and address shown on return, if different from above

same

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year

from July 1, 1965 to June 30, 1966

f. Kind of tax

Income

g. Amount of assessment

$ 325,621.09

Dates of payment $3,200:12/15/65; $15,800.20:3/15/66; $15,799.80:6/9/66; $100,102.50:9/15/66; $100,102.45:12/13/66

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)

$ 81,520.80

j. Amount of gift $90,616.14:6/1/70 tax, estate, or

$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached Statement

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	34,800.00
2. Estimated tax paid	200,204.95
3. Tax paid with original return	90,616.14
4. Any additional income tax paid	325,621.09
5. Total tax paid (Add lines 1-4)	244,100.29
6. Less: Your computation of correct tax	81,520.80*
7. Amount of overpayment	-0-
8. Amount previously refunded	81,520.80*
9. Net overpayment (Enter in item i above)	

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed .....

Dated ....., 19.....

SEE INSTRUCTIONS ON REVERSE

FORM 843 (Rev. 7-65)

*Or such greater amount as may be legally refundable.

STATEMENT ATTACHED TO AND FORMING A PART OF THE CLAIM OF IVAN ALLEN COMPANY FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 1966

I. *Salary Paid by Taxpayer to Ivan Allen, Sr.*

A. *Statement of Facts*

During the taxable year in question and during all the years of its existence, Ivan Allen Company (hereinafter referred to as "Taxpayer"), was engaged in the office supply business.

Taxpayer was founded in 1899 by Mr. Ivan Allen, Sr. and Mr. J. W. Fielder. At that time, the office supply business was unique, and Ivan Allen, Sr. may well have been its originator. He was undoubtedly the first in the southeast to visualize the idea of a department store of office equipment.

The business prospered in the early 1900's, and in 1920, Mr. Allen, Sr. was elected President of Taxpayer. In 1938 he became Chairman of Taxpayer's Board of Directors and served in this position until his death.

During a substantial portion of the period in which he served Taxpayer as President and Chairman of its Board of Directors, Mr. Allen, Sr. had the primary responsibility for the management and supervision of Taxpayer's business and was undoubtedly the major factor in its success and growth. Moreover, Mr. Allen, Sr. was responsible for a number of innovations in the office supply business, all of which contributed to Taxpayer's success. He originated an inventory control plan, which for years has been the most widely used plan in the business. With minor improvements, both the standard accounting forms and cost of doing business forms which Mr. Allen, Sr.

developed are still being used. He developed the quintuplet charge and billing system whereby the invoice, charge, delivery ticket, statistical record and salesman's slip are all made in one operation. Finally, Mr. Allen, Sr. was the first to capitalize on the use of "visual education" in the business. Indeed, as early as 1923, he suggested using films to demonstrate the various manufacturing processes and facilities connected with the stationer's industry.

Mr. Allen, Sr. was not only a successful businessman but also took an active part in numerous civic activities. He served as President of the Atlanta Chamber of Commerce, as President of the Southeastern Fair Association and was the first President of the Atlanta Convention Bureau. He served as a member of a small committee which raised the first substantial funds for the Atlanta area Boy Scouts and for many years served on the Executive Committee of the Council of Boy Scouts. Mr. Allen, Sr. was one of the original members of the Agriculture and Industrial Development Board of Georgia. He served as Chairman of the Forward Atlanta Commission, of the Fulton County Department of Public Welfare, and of a Committee which raised funds to reestablish Oglethorpe University. Finally, Mr. Allen, Sr.'s close relationship with President Franklin D. Roosevelt led to his appointment as Chairman of the Federal Home Loan Bank in the southeast and as Chairman of the Franklin D. Roosevelt Warm Springs Memorial Commission.

Thus, while Mr. Allen, Sr. was implementing the many innovations in the office supply business which he had developed, he was also engaged in various civic activities which drew attention to and created respect for both Taxpayer and Mr. Allen, Sr. It was this combination of Mr. Allen, Sr.'s business acumen and his various civic activities which led to Taxpayer's growth into a highly successful company.

Notwithstanding Mr. Allen, Sr.'s role in Taxpayer's success, his salary was always extremely modest. Indeed, throughout his years of service to Taxpayer, Mr. Allen, Sr. was paid a salary which was always less than Taxpayer's leading salesman, and frequently less than several of Taxpayer's salesmen.

In 1964, Mr. Allen, Sr. suffered a stroke which curtailed his activities with Taxpayer. At that time, he had served Taxpayer for more than 64 years, always at a very modest salary. Even after his sickness, however, Mr. Allen, Sr. continued to serve Taxpayer in a consulting capacity. In consideration of his services as a consultant and for the many years of service in which he was the major factor in Taxpayer's development, Taxpayer continued to pay him the very modest annual salary of $12,525.16.

Taxpayer deducted the amount of the salary which it paid to Mr. Allen, Sr. as an ordinary and necessary business expense for its taxable year 1966. The Commissioner determined, however, that the amount paid to Mr. Allen, Sr. constituted unreasonable compensation and that the payment should not therefore have been deducted. Accordingly, the Commissioner assessed a deficiency against Taxpayer for its taxable year 1966.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or, such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The amount which Taxpayer paid to Mr. Ivan Allen, Sr. constituted a reasonable salary for both past and present personal services actually rendered to Taxpayer within the meaning of Int. Rev. Code §162(a)(1).

The amount which Taxpayer paid to Mr. Allen, Sr. was, therefore, an ordinary and necessary business expense within the meaning of Int. Rev. Code §162(a).

(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Sr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

II. *Salary Paid by Taxpayer to Ivan Allen, Jr.*

A. *Statement of Facts*

Ivan Allen, Jr. was employed by Taxpayer in 1933. In 1938 he became Secretary-Treasurer of Taxpayer. In 1946 he was elected President of Taxpayer and in 1957 became Vice Chairman of Taxpayer's Board of Directors.

In 1962, Mr. Allen, Jr. was elected Mayor of the City of Atlanta and served in this capacity during the taxable year in question. Although his duties as Mayor limited the time which Mr. Allen, Jr. was able to spend on Taxpayer's routine matters, he continued to serve as Taxpayer's chief policy maker. For example, Mr. Allen, Jr. continued to receive daily communications with respect to the business problems confronting Taxpayer and often made daily responses. He continued to review all internal financial reports, including inventory and sales data, and was in frequent consultation with Taxpayer's officers with respect to merchandising lines, sales, personnel matters, inventory, accounting and market extension. Mr. Allen, Jr. continued to determine both Taxpayer's sales policies and the character of its advertising and promotional operations. He also continued his primary decision making role with respect to Taxpayer's major expenditures, including not only capital expenditures but also contributions

to the Ivan Allen Company Foundation and to Taxpayer's profit sharing plan. In short, Taxpayer made no policy decision of any significance during the taxable year in question without first obtaining the advice and approval of Mr. Allen, Jr.

Even prior to becoming Mayor of Atlanta, Mr. Allen, Jr., like his father, contributed to Taxpayer's success by spending at least one-half of his working time engaged in civic and outside business activities. Nevertheless, Taxpayer's success during these years clearly attest to Mr. Allen, Jr.'s ability to operate Taxpayer while spending a substantial portion of his time engaged in activities other than the management and supervision of Taxpayer's affairs.

In 1948, Taxpayer paid Mr. Allen, Jr. a very modest salary of $12,000. As his responsibility and value to Taxpayer grew, Mr. Allen, Jr.'s salary was increased to $30,000. When Mr. Allen, Jr. became Mayor of Atlanta, however, Taxpayer recognized that the amount of time that he could spend on its affairs would be curtailed. Accordingly, beginning in 1962 and including the taxable year in question, Taxpayer reduced Mr. Allen's salary to $15,025.08.

During the taxable year 1966, Taxpayer paid its president, Mr. W. H. Glenn, a salary of $34,000, approximately double that of Mr. Allen, Jr. In the same year, ten of Taxpayer's salesmen received salaries greater than that of Mr. Allen, Jr.

Taxpayer deducted the amount of the salary which it paid to Mr. Allen, Jr. as an ordinary and necessary business expense for its taxable year 1966. The Commissioner determined, however, that the amount paid to Mr. Allen, Jr. constituted unreasonable compensation and that the payment was not therefore deductible. Accordingly,

the Commissioner assessed a deficiency against Taxpayer for its taxable year 1966.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The amount which Taxpayer paid to Mr. Allen, Jr. constituted a reasonable salary for personal services actually rendered to Taxpayer within the meaning of Int. Rev. Code §162(a)(1). The amount which Taxpayer paid to Mr. Allen, Jr. was, therefore, an ordinary and necessary business expense within the meaning of Int. Rev. Code §162(a).

(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Jr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

III. *Accumulated Earnings Tax*

A. *Statement of Facts*

Taxpayer's shareholders as of June 30, 1966 were as follows:

	No. of Shares
Allen, Beaumont	1120
Allen, Hugh Inman	3019
Allen, Irene Beaumont	2615
Allen, Ivan Sr.	6525
Allen, Ivan Jr.	5158

Allen, Ivan Jr. Trustee U/W Charles M. Marshall	11145
Allen, Ivan III	2731
Allen, Ivan IV	179
Allen, Louise R.	2442
Allen, Margaret Poer	131
Ball, Jack T.	23
Brumbelow, Morris	11
Carnes, John	892
Dickerson, Elmer	346
Estes, Robert S.	46
Floyd, W. F. Jr.	683
Glenn, W. H.	2772
Hampton, James F.	28
Harris, Andrew D.	2
Harris, Grady W.	2
Harris, W. D.	548
Jones, Hayden C. Jr.	663
Lanier, D. B.	115
Layton, Estate of Charles R.	86
Murphy, J. H.	870
Ownby, O. G.	150
Ownby, O. G. Trustee for Roger Paul	11
Ownby, O. G. Trustee for Scott Alan	11
Patrick, James H.	28
Pettes, Thompson P.	28
Richardson, Walter	23
Snellings, Walter Arnold	25
Tebow, D. L.	231
Williams, J. C.	577
Wilson, S. W.	86
Winslow, T. E.	184
Total	43506

As an operating company, Taxpayer has a readily ascertainable operating cycle and a need for sufficient working capital to operate its business through at least one such cycle. Since Taxpayer's net liquid assets determined as of the end of the taxable year in question which were available for use in meeting its working capital requirements were less than its needs, Taxpayer retained a portion of its earnings and profits for the taxable year.

For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management viewed the securities as business investments which were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities are included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year.

Taxpayer does not have a history of making loans to its shareholders and possesses a record of regular and substantial dividends. Moreover, the income tax consequences to Taxpayer's shareholders have never been considered in determining its dividend policy.

Taxpayer's ratio of current assets to current liabilities for the taxable year in question was extremely small. Indeed, only a very insignificant amount of Taxpayer's earnings and profits has ever been invested in assets other

than assets directly related to the operation of Taxpayer's business.

Nevertheless, the Commissioner determined that Taxpayer had accumulated earnings beyond the reasonable needs of its business and that this accumulation was for the purpose of avoiding the income tax with respect to its shareholders. Accordingly, the Commissioner assessed an accumulated earnings tax deficiency against Taxpayer for its taxable year 1966.

Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency with interest thereon as provided by law, or such greater amount as may be legally refundable.

B. *Taxpayer's Contentions*

(1) The marketable securities which Taxpayer held and which had substantially appreciated in value were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. For this reason, the marketable securities are excludable in computing Taxpayer's net liquid assets available for use in its business. The cost of one of Taxpayer's operating cycles for the taxable year in question thus exceeded its net liquid assets available for use in its business determined as of the end of the taxable year. Consequently, Taxpayer's earnings and profits for the taxable year in question which it retained were not in excess of and were retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business, within the meaning of Int. Rev. Code §535(c). Accordingly, in computing its accumulated taxable income under Int. Rev. Code §535, Taxpayer is entitled to an accumulated earnings credit in an amount at least equal to the amount of its retained earnings and profits for

the taxable year in question (or in such lesser amount of its earning and profits for the taxable year in question as may be determined to have been retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business.)

(2) Even if the marketable securities held by Taxpayer are includable in computing Taxpayer's net liquid assets available for use in its business, which Taxpayer denies, the cost of one of Taxpayer's operating cycles for the taxable year in question still exceeded its net liquid assets determined as of the end of the taxable year. Moreover, if Taxpayer had distributed in its taxable year 1965 an amount equal to its accumulated taxable income for that year and had utilized its marketable securities to meet its working capital requirements, as the Commissioner contends it should have and Taxpayer denies, the cost of one of Taxpayer's operating cycles would have exceeded its net liquid assets determined as of the end of the taxable year in question by an even greater amount. Consequently, Taxpayer's earnings and profits for the taxable year in question which it retained were not in excess of and were retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business, within the meaning of Int. Rev. Code §535 (c). Accordingly, in computing its accumulated taxable income under Int. Rev. Code §535, Taxpayer is entitled to an accumulated earnings credit in an amount at least equal to the amount of its retained earning and profits for the taxable year in question (or in such lesser amount of its earnings and profits for the taxable year in question as may be determined to have been retained by Taxpayer for the reasonable needs of its business, including the reasonably anticipated needs of its business.)

(3) Even if the earnings and profits which Taxpayer retained exceeded the reasonable needs of its business, including the reasonably anticipated needs of its business, which Taxpayer denies, such excess was not accumulated by Taxpayer for the purpose of avoiding the income tax with respect to its shareholders. Taxpayer was not, therefore, formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation by permitting its earnings and profits to accumulate instead of being divided and distributed within the meaning of Int. Rev. Code §532(a).

(4) Under any of the alternative contentions stated above, Taxpayer is not subject to an accumulated earnings tax liability under Int. Rev. Code §531 for the taxable year in question. Accordingly, the accumulated earnings tax deficiency assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

Exhibit D

Form 843 (Rev. Nov. 1968)
Department of the Treasury
Internal Revenue Service

AMENDED Claim FOR REFUND

Director's Stamp (Date received)

The Internal Revenue Service will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to income, estate or gift taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps
IVAN ALLEN COMPANY

Number and street
P. O. Box 1712

City or town, State, and ZIP code
Atlanta, Georgia 30301

Fill in applicable items—Use attachments if necessary

a. Your social security number | Wife's number, if joint return

b. Employer identification number (if any)
58-0136820

c. Internal Revenue Service office where return (if any) was filed
Dist. Dir. Georgia

d. Name and address shown on return, if different from above
Same

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From July 1, 1965, to June 30, 1966

f. Kind of tax
Income

g. Amount of assessment
$ 325,621.09

Dates of payment: $3,200: 12/15/65; $15,800.20: 3/15/66; $15,766.80: 6/9/66; $100,102.50: 9/15/66; $100,102.45: 12/8/66; $90,616.14: 6/1/70.

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)
$ 81,520.80*

j. Amount to be abated (not applicable to income, estate, or gift taxes)
$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached Statement

COMPUTATION OF INCOME TAX REFUND	Income Tax
1 Tax withheld	
2 Estimated tax paid	34,800.00
3 Tax paid with original return	200,204.95
4 Any additional income tax paid	90,616.14
5 Total tax paid (add lines 1–4)	325,621.09
6 Less: Your computation of correct tax	244,100.29
7 Amount of overpayment	81,520.80*
8 Amount previously refunded	-0-
9 Net overpayment (enter in item i above)	81,520.80*

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed .....

Dated ....., 19.....

SEE INSTRUCTIONS ON REVERSE Form 843 (Rev. 11-68)

*Plus assessed interest, with interest thereon as provided by law, or such greater amount as may be legally recoverable.

STATEMENT AMENDING IVAN ALLEN COMPANY'S CLAIM FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 7/1/65-6/30/66

On October 19, 1970, Ivan Allen Company (hereinafter referred to as "taxpayer") filed a Claim For Refund ("Claim") of income and accumulated earning taxes paid for its taxable year 1966. This statement is filed to amend Taxpayer's previously filed Claim as follows:

(1) The Form 843 previously filed by Taxpayer is hereby amended in accordance with the Form 843 attached hereto and styled "Amended Claim for Refund."

(2) The "STATEMENT ATTACHED TO AND FORMING A PART OF THE CLAIM OF IVAN ALLEN COMPANY FOR REFUND OF INCOME AND ACCUMULATED EARNINGS TAXES PAID FOR THE TAXABLE YEAR 1966" is hereby amended as follows:

(a) PAGE 4, SECOND FULL PARAGRAPH, which reads:

> "Taxpayer has paid the deficiency. This claim is filed for refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

> "Taxpayer has paid the deficiency *with interest thereon.* This claim is filed for the refund of the deficiency *and interest* so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

(b) PAGE 4, CONTENTION (2) is hereby amended to read as follows (changes italicized):

> "(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Sr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency *and interest thereon* assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund."

(c) PAGE 7, THIRD PARAGRAPH, which reads:

> "Taxpayer has paid the deficiency. This claim is filed for the refund of the deficiency so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

> "Taxpayer has paid the deficiency *with interest thereon.* This claim is filed for the refund of the deficiency *and interest* so paid, with interest thereon as provided by law, or such greater amount as may be legally refundable."

(d) PAGE 8, CONTENTION (2) is hereby amended to read as follows (changes italicized):

> "(2) Under the contention stated above, the amount which Taxpayer paid to Mr. Allen, Jr. was properly deducted by Taxpayer under Int. Rev. Code §162(a). Accordingly, the deficiency *and interest thereon* assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund.

(e) PAGE 10, SECOND PARAGRAPH, which reads:

> "For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management viewed the securities as business investments which were not available either for use in meeting Taxpayer's reasonable business needs or for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities are included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year."

is hereby amended to read as follows (changes italicized):

> "For a number of years, including the taxable year in question, Taxpayer has held certain marketable securities. Substantially all of these securities, however, were of corporations engaged in businesses related to that of Taxpayer. Moreover, since most of the securities had greatly appreciated in value, Taxpayer would have had to incur a substantial capital gains tax to convert them into cash. For these reasons, Taxpayer's management *did not*

view the securities *as a part of Taxpayer's net liquid assets. Rather, the securities were viewed as long-term* business investments which were *neither* available for use in meeting Taxpayer's reasonable business needs *nor generally available* for distribution to its shareholders. However, even if the cost of Taxpayer's marketable securities were included in the computation of Taxpayer's net liquid assets, the cost of one of Taxpayer's operating cycles for the taxable year in question was still in excess of its net liquid assets determined as of the end of the taxable year."

(f) PAGE 11, FOURTH PARAGRAPH, which reads:

"Taxpayer has paid the deficiency. This claim is filed for refund of the deficiency with interest thereon as provided by law, or such greater amount as may be legally refundable."

is hereby amended to read as follows (changes italicized):

"Taxpayer has paid the deficiency *with interest thereon. The deficiency was paid within ten days of the receipt of notice and demand issued in connection therewith.* This claim is filed for the refund of the deficiency *and interest so paid* with interest thereon as provided by law, or such greater amount as may be legally refundable."

(g) PAGE 11, CONTENTION (1), FIRST SENTENCE is hereby amended to read as follows (changes italicized):

"(1) The marketable securities which Taxpayer held and which had substantially appreciated in value were *neither* available for use in meeting Taxpayer's reasonable business needs *nor generally available* for distribution to its shareholders."

(h) PAGE 14, CONTENTION (4), is hereby amended to read as follows (changes italicized):

"(4) Under any of the alternative contentions stated above, Taxpayer is not subject to an accumulated earnings tax liability under Int. Rev. Code §531 for the taxable year in question. Accordingly, the accumulated earnings tax deficiency *and interest thereon* assessed against and paid by Taxpayer constitutes an overpayment for which Taxpayer is entitled to a refund."

(i) PAGE 14 is hereby amended to add the following contentions (5), (6) and (7) with respect to the interest paid by Taxpayer on the accumulated earnings tax assessed against it:

"(5) The accumulated earnings tax imposed by Int. Rev. Code §531 is not a 'tax' within the meaning of Int. Rev. Code §6601(a). Rather, it is either an 'assessable penalty, additional amount or addition to the tax' within the meaning of Int. Rev. Code §6601 (f)(3). Interest on such a penalty, additional amount, or addition to the tax can be imposed only if it is not paid within ten days from the date of notice and demand. Taxpayer paid the accumulated earnings tax deficiency assessed against it within ten days of

the receipt of notice and demand. Accordingly, even if an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, Taxpayer is not liable for any interest on such tax."

"(6) Even if the accumulated earnings tax is a 'tax' within the meaning of Int. Rev. Code §6601(a), which Taxpayer denies, by virtue of Int. Rev. Code §6155, the 'last date prescribed for payment' of such tax under Int. Rev. Code §6601(a) is the date of notice and demand. Interest can therefore be imposed on an accumulated earnings tax deficiency only from the date of notice and demand to the date of payment, unless payment is made within ten days of notice and demand in which case Int. Rev. Code §6601(f)(4) precludes the imposition of any interest. Taxpayer paid the accumulated earnings tax assessed against it within ten days of the receipt of notice and demand. Consequently, even if an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, Taxpayer is not liable for any interest on such tax."

"(7) Under either of the alternative contentions (5) or (6) stated above, Taxpayer is not liable for any interest on the accumulated earnings tax assessed against it for the taxable year in question. Accordingly, even if an accumulated earnings tax was properly assessed against Taxpayer, which Taxpayer denies, the interest assessed against and paid by Taxpayer with respect to such tax constitutes an overpayment for which Taxpayer is entitled to a refund.

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Title Omitted in Printing)

ANSWER

(Filed July 15, 1971)

The defendant, United States of America, by and through its attorney, for answer to the plaintiff's complaint herein, admits, denies and alleges as follows:

1.

Admits the allegations contained in paragraph 1, except denies that the internal revenue taxes sought to be recovered herein were erroneously and illegally assessed against and collected from the plaintiff.

2.

Admits the allegations contained in paragraph 2.

3.

Admits the allegations contained in paragraph 3, except denies that the taxes referred to therein were erroneously and illegally assessed against and collected from the taxpayer.

4.

Admits the allegations contained in paragraph 4.

5.

With respect to the allegations contained in paragraph 5, the defendant answers as follows:

Denies the allegations contained in the first sentence and alleges that upon audit of the taxpayer's returns for

the taxable years in question, the Secretary of the Treasury or his delegate determined that the alleged salaries which the taxpayer paid Mr. Ivan Allen, Sr., and Mr. Ivan Allen, Jr., were not ordinary and necessary business expenses of the taxpayer.

Admits the allegations contained in the second sentence.

6.

Denies the allegations contained in paragraph 6, except admits that the Secretary of the Treasury or his delegate assessed against the taxpayer, for the years referred to, additional income and accumulated earnings taxes, together with interest thereon, in at least the amounts set out in paragraph 6.

7.

Admits the allegations contained in paragraph 7.

8.

Admits the allegations contained in paragraph 8, except denies that no decision has been rendered on the said claims for refund, as amended, by the Secretary of the Treasury or his delegate.

9.

Admits the allegations contained in paragraph 9, except denies each and every allegation of fact and each and every contention set out in the claims for refund and amendments referred to in paragraph 9 unless otherwise specifically admitted herein.

10.

Denies the allegations contained in paragraph 10.

11.

Admits the allegations contained in paragraph 11, except denies that the taxes and interest referred to therein were erroneously and illegally assessed against and collected from the taxpayer.

12.

Denies the allegations contained in paragraph 12.

13.

Admits the allegations contained in paragraph 13, except denies that the additional income and accumulated earnings taxes and the interest thereon sought to be recovered herein were erroneously and illegally assessed against and collected from the taxpayer.

14.

Admits the allegations contained in paragraph 14.

WHEREFORE, the defendant prays for judgment in its favor, for dismissal of the plaintiff's complaint with prejudice, for costs and for such other and further relief as justice may require.

The defendant requests a trial by jury.

John W. Stokes, Jr.
United States Attorney
By: /s/ Stanley M. Baum
Assistant United States Attorney

(Certificate Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Title Omitted in Printing)

STIPULATION

(Filed June 12, 1972)

The parties hereto through their respective counsel stipulate and agree as follows:

1. This is a civil action instituted by Ivan Allen Company (hereinafter referred to as the "taxpayer") against the United States (hereinafter referred to as the Government) for the recovery of $212,132.53 in federal income and accumulated earnings taxes, including interest thereon, paid for the fiscal years ended June 30, 1965 and June 30, 1966.

2. Both factual and legal issues are presented by the case. One of the legal issues (set out hereinbelow in paragraph 15) is such that its resolution may be dispositive of the taxpayer's claim for the refund of the accumulated earnings taxes involved. Therefore, such issue is hereby submitted to the Court for decision. Pending the Court's decision thereof, the remaining issues in the case may, subject to the discretion of the Court, be held in abeyance.

3. The taxpayer is a Georgia corporation engaged in the business of selling office furniture, equipment and such other supplies as are used in offices and places of business.

4. For its fiscal years ended June 30, 1965 and June 30, 1966, the taxpayer filed its federal income tax returns

with, and paid the tax shown as due thereon to, the District Director of Internal Revenue, Atlanta, Georgia. True copies of said returns are attached hereto as Exhibits A and B, respectively.

5. Following an examination of the taxpayer's federal income tax returns for the fiscal years ended June 30, 1965 and June 30, 1966, the Commissioner of Internal Revenue determined, among other things, that the taxpayer had permitted its undistributed earnings and profits for each of such years to accumulate beyond the reasonable and reasonably anticipated needs of its business and that one of the purposes of the accumulation for each such year was avoiding income tax with respect to its shareholders. Based upon such determination, $77,383.98 and $73,131.87 in accumulated earnings taxes, together with interest thereon, were assessed against and collected from the taxpayer for its fiscal years ended June 30, 1965, and June 30, 1966, respectively. Thereafter, and within the time provided by law, the taxpayer duly filed claims for refund of such accumulated earnings tax and interest. When the claims for refund were not allowed, the taxpayer instituted the instant action alleging that such accumulated earnings taxes and interest were erroneously and illegally assessed against and collected from it.

6. At the close of its fiscal years ended June 30, 1965 and June 30, 1966, the taxpayer owned listed and unlisted marketable securities the cost and fair market values (FMV) of which were as follows:

	FYE 6-30-65		FYE 6-30-66	
	Cost	FMV	Cost	FMV
40 shs. Arlington Development Corp. common stock (unlisted)	$ 1,000	$ 1,000	$ 1,000	$ 1,000
300 shs. C. & S. Capital Corp. common stock (listed)	1,650	788	1,650	825
$600 Commerce and Jackson County Development Corp. bond (unlisted)	600	600		
149 shs. Minnesota Mining & Mfg. Co. common stock (listed)	3,046	8,605		
165 shs. Southern Airways common stock (listed)	600	1,650		
11,140 shs. Xerox Corp. common stock (listed)	116,701	1,573,525		
10,090 shs. Xerox Corp. common stock (listed)			102,479	2,479,617
$30,600.00 Xerox Corp. convertible debentures (listed)	30,625	48,424	30,625	69,768
	$154,222	$1,634,592	$135,754	$2,551,210

7. The cost of converting the taxpayer's marketable securities into cash would have been the sum of a maximum of 6% of the fair market value of such securities (payable as a brokerage commission) and a maximum of 25% of such amount of the fair market value as exceeds the sum of the brokerage commission and the cost of the securities (payable as capital gains taxes).

8. For its fiscal year ended June 30, 1965, the taxpayer paid dividends to its stockholders as follows:

Cash	$48,945.30
870 shs. Xerox Corp. common stock (at cost)	6,564.34

9. For its fiscal year ended June 30, 1966, the taxpayer paid dividends to its stockholders as follows:

Cash	$50,267.49
10% stock dividend of Ivan Allen Company	

10. In determining whether the accumulated earnings taxes involved herein were erroneously and illegally assessed against and collected from the taxpayer, it is necessary to determine whether the taxpayer's undistributed "earnings and profits [were] permitted to accumulate beyond the reasonable [and reasonably anticipated] needs of the business," within the meaning of Section 533(a) of the Internal Revenue Code of 1954.

11. For the purposes of determining whether the taxpayer permitted its earnings and profits "to accumulate beyond the reasonable [and reasonably anticipated] needs of the business," within the meaning of Section 533(a) of the Internal Revenue Code of 1954, the parties agree that the taxpayer had reasonable business needs for operating capital equal to $1,198,309.00 and $1,455,222.00 at the close of its fiscal years ended June 30, 1965 and June 30, 1966, respectively.

12. The amounts of net liquid assets (current assets less current liabilities) owned by the taxpayer at the close of its fiscal years ended June 30, 1965 and June 30, 1966, were $1,198,309.00 and $1,455,222.00, respectively, if its marketable securities are taken into account at cost, and $2,235,029.00 and $3,152,009.00, respectively, if its marketable securities are taken into account at their fair market value less the cost of converting them into cash.

13. If, in determining the amount of the taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should properly be taken into account at cost, the taxpayer's undistributed earnings and profits were not permitted to accumulate beyond the reasonable and reasonably anticipated needs of the taxpayer's business.

14. If, in determining the amount of the taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should properly be taken into account at their fair market value (less the cost of converting them into cash), the taxpayer's undistributed earnings and profits for each of such years were permitted to accumulate beyond the reasonable and reasonably anticipated needs of the taxpayer's business.

15. Thus, the following legal question is presented for resolution by the Court:

> Whether, in determining the amount of the taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should properly be taken into account at their cost, as the taxpayer contends, or at their fair market value (less the cost of converting them into cash), as the Government contends.

16. In the event it is determined that the taxpayer permitted its undistributed earnings and profits to accumulate beyond the reasonable and reasonably anticipated needs of its business, a further factual issue relating to the

accumulated earnings tax involved in the case remains to be resolved, i.e. whether one of the purposes of such accumulations was avoiding income tax with respect to the taxpayer's shareholders. In the further proceeding, if any, to resolve said remaining factual issue, either party may, subject to pertinent objections, offer any evidence therein which is not inconsistent with the matters stipulated herein.

June 12, 1972 — /s/ Kirk McAlpin
Date — Counsel for Plaintiff

June 12, 1972 — /s/ Jack D. Warren
Date — Counsel for Defendant

Exhibit A

Form 1120 — U.S. CORPORATION INCOME TAX RETURN — 1964

U.S. Treasury Department, Internal Revenue Service

or other taxable year beginning July 1, 1964, ending June 30, 19 65

(PLEASE TYPE OR PRINT)

5 3471570510

Check if this is a—
A. Sole proprietorship ☐ or partnership ☐ electing under sec. 1361 to be taxed as a corporation.
B. Consolidated return. ☐
C. Personal Holding Co. ☐
D. Business Code No. (see instructions) 5204

58-0136820
IVAN ALLEN CO PAINT 1965 DO 59 6
BOX 1712
ATLANTA GA 30301

E. Employer Identification No. 58-0136820

F. County in which located. Fulton

G. Enter total assets from line 13 Sch. L (see instruction R). $3,717,835.18

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction Q.

GROSS INCOME	1. Gross receipts or gross sales ..... Less: Returns and allowances	$6,501,259.76
	2. Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	4,510,571.01
	3. Gross profit	1,990,688.75
	4. Dividends (Schedule C)	59,293.63
	5. Interest on obligations of the United States and U.S. instrumentalities	
	6. Other interest	13,205.96
	7. Rents	159,325.76
	8. Royalties	
	9. Net gains (losses) from separate Schedule D	1,657.04
	10. Other income (attach schedule)	176,287.41
	11. TOTAL income, lines 3 through 10	2,400,458.55
DEDUCTIONS	12. Compensation of officers (Schedule E)	156,309.16
	13. Salaries and wages (not deducted elsewhere)	1,139,731.35
	14. Repairs (do not include cost of improvements or capital expenditures)	8,255.60
	15. Bad debts (from Schedule F if reserve method is used)	14,498.18
	16. Rents	87,707.66
	17. Taxes (attach schedule)	103,402.33
	18. Interest	20,680.94
	19. Contributions or gifts paid (attach schedule—see instructions for limitation)	20,602.38
	20. Losses by fire, storm, shipwreck, or other casualty, or theft (attach schedule)	
	21. Amortization (attach schedule)	
	22. Depreciation (Schedule G)	64,395.22
	23. Depletion (attach schedule)	
	24. Advertising	89,316.18
	25. (a) Pension, profit-sharing, stock bonus, annuity plans (see instructions)	60,000.00
	(b) Other employee benefit plans (see instructions)	
	26. Other deductions (attach schedule)	244,113.94
	27. TOTAL deductions in lines 12 through 26	2,009,013.14
	28. Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	391,445.41
	29. Less: (a) Net operating loss deduction (see instructions—attach schedule)	
	(b) Special deductions (Schedule I) 50,399.59	50,399.59
	30. Taxable income (line 28 less line 29)	341,045.82
TAX	31. TOTAL income tax (from line 10, Schedule J)	160,338.95
	32. Credits: (a) Tax paid with Form 7004 application for extension (attach copy) 60,000.00	
	(b) Payments and credits on 1964 declaration of estimated tax 46,020.00	
	(c) Credit from regulated investment companies (attach Form 2439)	106,020.00
	33. If tax (line 31) is larger than credits (line 32), the balance is TAX DUE. Enter balance here ⟶	54,318.95
	34. If tax (line 31) is less than credits (line 32) ..... Enter the OVERPAYMENT here ⟶	
	35. Enter amount of line 34 you want: Credited on 1965 estimated tax ..... Refunded	

RECEIVED
DEC 15 1965
DIRECTOR INT. REV.
ATLANTA
TELLER - #2

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

12/10/65
Date

[signature]
Signature of officer

Treasurer
Title

GODFREY, LAWRENCE & HORTON
CERTIFIED PUBLIC ACCOUNTANTS

Name — Individual's name (Corporation's name) — Address (Number and street, City, State, and ZIP code)

120-15—(Back)

Form 1120 (1984) _____ _____ Page 2

Schedule A.—COST OF GOODS SOLD (See instruction 2)
(Where inventories are an income-determining factor)

1. Inventory at beginning of year	516,537.81
2. Merchandise bought for manufacture or sale	3,267,572.21
3. Salaries and wages	422,741.81
4. Other costs per books (attach schedule)	772, 33.43
5. Total	5,079,785.26
6. Less: Inventory at end of year	569,214.25
7. Cost of goods sold (enter here and on line 2, page 1)	4,510,571.01

1. Was inventory valued at—Cost ☐; lower of cost or market ☒; LIFO ☐; other ☐? If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☒ No ☐. If "Yes," were the write-downs computed on the basis of:
(a) ☐ Percentage reductions from parts of the inventory
(b) ☒ Percentage reductions from the total inventory
(c) ☐ Valuation of individual items.
If "a" or "b" is checked, enter the percentage of write-downs ....0.... %. For "a," "b," or "c" enter the dollar amount of write-downs $ 21,124.31. (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year? Yes ☒ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☒. If "Yes," attach explanation.
NOTE: If a direct answer cannot be given to a question, attach explanation.

Schedule C.—INCOME FROM DIVIDENDS

1. Name of declaring corporation	2. Domestic corporations subject under chapter 1, Internal Revenue Code	3. Certain preferred stock of public utilities taxable under chapter 1, Internal Revenue Code	4. Foreign corporations	5. Other corporations
Totals				
Total of columns 2, 3, 4, and 5				
Add amount includible by shareholder of controlled foreign corporation (attach statement)				
Total (enter here and on line 4, page 1) ..... Schedule				59,298 63

Schedule D.—Separate Schedule D (Form 1120) should be used in reporting sales or exchanges of property. (See instruction 9)

Schedule E.—COMPENSATION OF OFFICERS (See page 5 of instructions)

1. Name and address of officer	2. Official title	3. Time devoted to business	Percent of corporation stock owned		6. Amount of compensation	7. Expense account allowances
			4. Common	5. Preferred		
Total compensation of officers (enter here and on line 12, page 1)						

Schedule F.—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. Taxable year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	4. Gross amount added to reserve	5. Amount charged against reserve	6. Reserve for bad debts at end of year
1961					
1962					
1963					
1964					

NOTE: Securities which are capital assets and which became worthless within the taxable year should be reported in separate Schedule D.

Schedule G.—DEPRECIATION (See instruction 22)

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62-21 as well as for those taxpayers who wish to continue using procedures authorized prior to the Revenue Procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class —or— Description of property	2. Cost or other basis at beginning of year —or— Cost or other basis	3. Asset additions in year (amount) —or— Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life —or— Rate (%) or life	8. Depreciation for this year
1. Total additional first year depreciation (do not include in items below)							2,000.00
Schedule							91,470.80
2. Totals	1,807,555.32						(1,977.60)
3. Less: Amount of depreciation claimed in Schedule A and elsewhere on return							19,521.58
4. Balance—Enter here and on line 22, page 1							64,395.22
5. Cost or other basis of fully depreciated assets still in use							

FORM 7004
Rev. Feb. 1959

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

APPLICATION FOR AUTOMATIC EXTENSION OF TIME TO FILE U.S. CORPORATION INCOME TAX RETURN (SEC. 6081(b), INTERNAL REVENUE CODE OF 1954)

(See Instructions on reverse side)

For taxable year beginning July 1, 1964 and ending June 30, 1965

If an extension of time is necessary, file this form with the District Director of Internal Revenue on or before the 15th day of the third month following the close of the taxable year.

PLEASE TYPE OR PRINT PLAINLY

Name of corporation

IVAN ALLEN COMPANY

Number and street

BOX 1712

City or town, postal zone number, State

ATLANTA, GEORGIA 30301

DO NOT WRITE IN SPACE BELOW

Serial No.

Application is hereby made for an automatic extension of three months for filing the completed return of the corporation named herein in accordance with the provisions of section 6081(b) of the Internal Revenue Code of 1954.

Reason extension is applied for: F.Y.E. 6-30-63 and 6-30-64 are being examined by I.R.S. adjustments may be made affecting F.Y.E. 6-30-65.

A remittance of an amount not less than would be required as the first installment of the tax tentatively determined to be due for the taxable year shown above accompanies this application.

1. Tentative amount of tax for the taxable year	$ 166,020.00
2. Less: Payments made on declaration of estimated tax	$ 46,020.00
3. Balance due	$ 120,000.00
4. Amount of remittance	$ 60,000.00

SIGNATURE AND VERIFICATION

I declare under the penalties of perjury that I have been authorized by the above-named corporation to make this application and that, to the best of my knowledge and belief the statements made herein are true and correct.

(Signature—see instructions) (Title, if an officer of the corporation) (Date)

I declare under the penalties of perjury that I am currently enrolled to practice before the Treasury Department and have been authorized by the above-named corporation to make this application; and that to the best of my knowledge and belief the statements made herein are true and correct.

(Date) (Signature of enrolled representative)

(Address) (Name of firm, if any)

A COPY OF THIS APPLICATION MUST BE FILED WITH THE TAXPAYER'S COMPLETED RETURN

SCHEDULE D (Form 1120)

U.S. Treasury Department—Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1964

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

PART I.—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—Assets Held More Than 6 Months—Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1.				

f. Depreciation allowed (or allowable) since acquisition (attach schedule)		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-1 or h) —OR— (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 —OR— Prior to January 1, 1964	f-2. After December 31, 1961 —OR— After December 31, 1963				

2. Total ordinary gain. Enter here and on line 11 and identify as gain from Part I .....
3. Total other gain. Enter here and on line 4 and identify as gain from Part I .....

PART II.—SALE OR EXCHANGE OF PROPERTY UNDER SECTION 1231

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
4.						

5. Total (If gain, enter on line 9; if loss, enter on line 11. Identify as gain or loss from Part II.) .....

PART III.—CAPITAL ASSETS

Short-Term Capital Gains and Losses—Assets Held Not More Than 6 Months

6.						

7. Unused capital loss carryover (attach statement) .....
8. Total of short term capital gains or losses or difference between short-term capital gains and losses .....

Long-Term Capital Gains and Losses—Assets Held More Than 6 Months

9. 100 sh. Ivan Allen Co. of Augusta	1958	8-21-64	2,665.00		1,000.00	1,665.00
20 sh. Ivan Allen Co. of Rome	6-30-63	5-20-65	1,367.80		1,375.76	(7.96)

10. Total of long term capital gains or losses or difference between long-term capital gains and losses 1,657.04

PART IV.—PROPERTY OTHER THAN CAPITAL ASSETS

11.						

12. Total net gain (or loss). Enter here and on line 15. .....

16—75387-1

Schedule D (Form 1120) 1964 — Page 2

PART I.—TOTAL SCHEDULE D GAINS AND LOSSES

13. Enter the excess of net short-term capital gain (line 8) over net long-term capital loss (line 10)	
14. Enter the excess of net long-term capital gain (line 10) over net short-term capital loss (line 8)	1,657.04
15. Net gain (loss) from property other than capital assets (line 12)	
16. Total lines 13, 14 and 15, enter here and on Form 1120, page 1, line 9	1,657.04

Alternative Tax Computation

(Component members of controlled corporate group use Form 3920 to compute your tax)

17. Taxable income (line 30, page 1, Form 1120)		341,045.82
18. Net long-term capital gain reduced by any net short-term capital loss (line 14)		1,657.04
19. Line 17 minus line 18		339,388.78
20. If amount of line 19 is:		
(a) **Not over $25,000**—Enter 22 percent of line 19		
(b) **Over $25,000**—Enter 50 percent of line 19	169,694.39	
Subtract $7,000 and enter difference ... Controlled - 5,500.00	25,000.00	164,194.39
21. 25 percent of line 18		414.26
22. Alternative tax (line 20 plus line 21). If applicable, enter on line 3, Schedule J, Form 1120, and write "alt." in the margin to the right of the entry		164,608.65

INSTRUCTIONS

(References are to the Internal Revenue Code)

Gains and losses from sales or exchanges of capital assets and other property.—Report sales or exchanges of capital assets and sales or exchanges of property other than capital assets in Schedule D. Every sale or exchange of property, even though no gain or loss may be indicated, must be reported in detail.

Losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges. However, the amount of a net capital loss sustained in any taxable year may be carried over to each of the five succeeding taxable years (or to the extent such loss is attributable to a foreign expropriation loss to each of the ten succeeding taxable years). A net capital loss shall be treated in each such succeeding taxable year as a short-term capital loss to the extent not allowed as a deduction against any net capital gains of any taxable year intervening between the taxable year in which the net capital loss was sustained and the taxable year to which carried.

Definition of capital assets.—The term "capital assets" means property held by the taxpayer (whether or not connected with its trade or business) but does not include (1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; or (2) property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in the trade or business of the taxpayer; or (3) certain copyrights, literary, musical, or artistic compositions, or similar properties; or (4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in (1) above; or (5) an obligation of the United States or any of its possessions, or of a State, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue.

Basis.—In determining gain or loss for property acquired after February 28, 1913, use cost, except where property was acquired by bequest, gift, tax-free exchange, involuntary conversion, or wash sale of stock; see sections 1014, 1015, 1031, 1033, and 1091, respectively. If the amount shown as the basis is other than actual cash cost of the property sold or exchanged, full details must be furnished regarding the acquisition of the property.

Losses on securities becoming worthless.—If any securities become worthless within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 581, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets. Section 165(g)(1).

Losses not allowable.—No loss is recognized for wash sales of stock or securities. Section 1091.

No loss is allowed (except distributions in liquidation) between related persons. Section 267.

Gains from section 1245 or 1250 property held more than 6 months (Part I).—*(Report any gain from such property held for 6 months or less in Part IV.)* Except as provided below section 1245 property means depreciable (a) personal property (other than livestock) including intangible personal property; (b) tangible real property (except for buildings and their structural components) if used as an integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or used as a research or storage facility in connection with these activities; and (c) elevators or escalators.

Except as provided below section 1250 property means depreciable real property (other than section 1245 property).

See sections 1245(b) and 1250(d) for exceptions and limitations involving: (a) disposition by gift; (b) certain tax-free transactions; (c) like kind exchanges, involuntary conversions; and (d) sales or exchanges to effectuate FCC policies and exchanges to comply with S.E.C. orders.

Column f of Part I.—In computing depreciation allowed or allowable for elevators or escalators enter in column f-1 depreciation prior to July 1, 1963, and in column f-2 depreciation after June 30, 1963.

Column i of Part I, section 1250 property only.—If held for more than 6 months, but not more than 1 year, enter the smaller of
(1) column h, or
(2) column f-2.

If held for more than 1 year, enter the result of multiplying the smaller of
(1) column h, or
(2) column f-2 less the amount of depreciation computed for the same period using the straight line method,

by the percentage obtained by subtracting from 100%, one percentage point for each full month the property was held in excess of 20 months. Where substantial improvements have been made within the preceding ten years, see section 1250(f).

Gain on sales by a "controlled" corporation.—In the case of a sale or exchange, directly or indirectly, of property between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren, any gain recognized to the transferor from such sale or exchange shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, if such property in the hands of the transferee is depreciable under section 167. Section 1239.

Installment sales.—If you sold personal property for more than $1,000 or real property regardless of amount, you may be eligible to report any gain under the installment plan if (1) there is no payment in the year of sale, or (2) the payments in the year of sale do not exceed 30% of the selling price. Section 453.

For treatment of a portion of payments as "unstated interest" on deferred payment sales, see Section 483.

(Instructions continued on reverse of duplicate)

16—78387-1

Schedule D (Form 1120) 1965 — Page 2

PART V.—TOTAL SCHEDULE D GAINS AND LOSSES

13. Enter the excess of net short-term capital gain (line 8) over net long-term capital loss (line 10)	
14. Enter the excess of net long-term capital gain (line 10) over net short-term capital loss (line 8)	1,657.04
15. Net gain (loss) from property other than capital assets (line 12)	
16. Total lines 13, 14, and 15. Enter here and on Form 1120, page 1, line 9	1,657.04

Alternative Tax Computation

(Component members of controlled corporate group use Form 3320 to compute your tax)

17. Taxable income (line 30, page 1, Form 1120)		341,045.82
18. Net long-term capital gain reduced by any net short-term capital loss (line 14)		1,657.04
19. Line 17 minus line 18		339,388.78
20. If amount of line 19 is:		
(a) Not over $25,000—Enter 22 percent of line 19		
(b) Over $25,000—Enter 48 percent of line 19	162,906.61	
Subtract $6,500 and enter difference	Controlled - 5,000.00 ~~x500x60~~	157,906.61
21. 25 percent of line 18		414.26
22. Alternative tax (line 20 plus line 21). If applicable, enter on line 3, Schedule J, Form 1120, and write "alt." in the margin to the right of the entry		158,320.87

INSTRUCTIONS

(References are to the Internal Revenue Code)

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See sections 1245(b) and 1250(d) for exceptions and limitations involving: (a) disposition by gift; (b) certain tax-free transactions; (c) like kind exchanges, involuntary conversions; and (d) sales or exchanges to effectuate FCC policies and exchanges to comply with SEC orders.

Column f of Part I.—In computing depreciation allowed or allowable for elevators or escalators enter in column f-1 depreciation prior to July 1, 1963, and in column f-2 depreciation after June 30, 1963.

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(1) column h, or
(2) column f-2.

If held for more than 1 year, enter the result of multiplying the smaller of
(1) column h, or
(2) column f-2 less the amount of depreciation computed for the same period using the straight line method,

by the percentage obtained by subtracting from 100%, one percentage point for each full month the property was held in excess of 20 months. Where substantial improvements have been made within the preceding ten years, see section 1250(f).

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Installment sales.—If you sold personal property for more than $1,000 or real property regardless of amount, you may be eligible to report any gain under the installment plan if (1) there is no payment in the year of sale, or (2) the payments in the year of sale do not exceed 30% of the selling price. Section 453.

For treatment of a portion of payments as "unstated interest" on deferred payment sales, see section 483.

(Instructions continued on reverse of duplicate)

CCH—REPRODUCED BY PHOTOGRAPHIC PROCESS BY COMMERCE CLEARING HOUSE, INC., CHICAGO, NEW YORK, WASHINGTON.

COST OF GOODS MANUFACTURED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

	Quick-copy	Printing
Inventory - materials, June 30, 1964	$ 3,974.10	$ 68,702.95
Purchases - materials	71,499.84	523,110.08
Freight	7.55	3,991.84
	$ 75,481.49	$ 595,804.87
Less inventory - materials, June 30, 1965	5,498.10	65,155.96
MATERIALS USED	$ 69,983.39	$ 530,648.91
Direct labor	$ 52,974.30	$ 313,501.55
Manufacturing expenses:		
Labor - indirect	$ -	$ 56,263.96
Payroll taxes	1,980.00	9,600.00
Rent - building	-	19,800.00
- equipment	2,998.88	372.20
Heat, power and water	-	14,082.37
Depreciation, equipment	383.86	19,200.72
Insurance	-	7,791.81
Taxes, general	-	2,274.32
Maintenance - equipment	3,461.68	14,632.35
Supplies - departmental	6,287.48	3,584.34
- litho	-	5,211.06
- letterpress	-	2,221.62
- composition	2,608.63	5,498.01
- cutting machine	276.57	456.19
- bindery "B"	-	917.68
- plate making	7,892.70	7,732.01
- collator	-	1,930.71
- rotary press	-	940.48
- camera	-	2,990.40
Outside services	2,207.38	23,741.80
Other	2,047.90	1,800.97
TOTAL MANUFACTURING EXPENSE	$ 29,545.08	$ 201,045.00
TOTAL COST OF GOODS MANUFACTURED	$153,503.77	$1,045,195.46

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

DIVIDENDS	
Xerox	$ 5,950.25
3 M Company	193.71
Ivan Allen Company of Huntsville	2,400.00
Ivan Allen Company of Augusta	4,000.00
Ivan Allen Company of Athens, Tenn.	4,000.00
Southern Airways	33.00
Ivan Allen Company of Gainesville	5,850.00
Ivan Allen Company of Columbus	1,500.00
Ivan Allen Company of Rome	14,700.00
Ivan Allen Company of Macon	11,666.67
Ivan Allen Company of Greenville	9,000.00
	$ 52,293.63

OTHER INCOME	
Discount earned	$ 77,074.94
Sales tax compensation	214.52
Profit on special sales	6,557.19
Purchase charges to subsidiaries	92,440.76
	$176,287.41

COMPENSATION OF OFFICERS

	Compensation	Expenses
Ivan E. Allen, Chairman	$ 12,525.16	$ 960.42
W. H. Glenn, Jr., President	31,025.00	1,919.89
H. C. Jones, Exec. Vice-President	27,524.92	2,039.95
W. F. Floyd, Jr., Sec.-Treas.	21,224.92	706.47
J. H. Carnes, Vice-President	22,159.32	706.30
W. D. Harris, Vice-President	24,824.92	860.57
J. N. Murphy, Vice-President	17,024.92	3,413.05
	$156,309.16	

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

OTHER DEDUCTIONS	
Travel and entertainment	$ 54,895.25
Telephone and telegraph	33,932.67
Postage	18,116.77
Dues and subscriptions	19,438.35
Sales promotion	4,968.15
Stationery and supplies	45,950.23
Heat, power and water	16,973.23
Truck	21,165.60
Amortization, leaseholds	3,267.00
Insurance	23,581.98
Employees welfare	3,922.68
Administrative charges to subsidiaries	(56,100.00)
Legal and professional	10,629.13
Credits and collections	1,702.68
Bank charges	685.42
Contract services	12,778.30
Directors fees	1,700.00
Rent commissions	2,875.08
Pensions	2,808.60
Miscellaneous	20,822.82
	$244,113.94

QUESTION I (1) FEDERAL RETURN	
Ivan Allen Company of Albany, Ga.	96.00%
Ivan Allen Company of Athens, Ga.	100.00
Ivan Allen Co. of Athens, Tenn.	66.67
Ivan Allen Co. of Augusta, Ga.	66.67
Ivan Allen Co. of Chattanooga, Tenn.	100.00
Ivan Allen Co. of Columbus, Ga.	66.67
Ivan Allen Co. of Gainesville, Ga.	90.00
Ivan Allen Co. of Greenville, S. C.	60.00
Ivan Allen Co. of Huntsville, Ala.	100.00
Ivan Allen Co. of Macon, Ga.	66.67
Ivan Allen Co. of Rome, Ga.	96.7

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

TAXES		
City, state and county	$43,323.82	
Intangibles	1,643.19	
Domestic corporation	1,000.00	
Corporation registration	2.00	
Business licenses	943.00	
Automobile and truck	229.50	
Pay roll	49,755.07	$ 96,896.58
Less taxes charged to cost of sales		13,854.32
GEORGIA		$ 83,042.26
Georgia income tax - current years	$17,683.57	
- prior years	2,676.50	20,360.07
		$103,402.33
CONTRIBUTIONS		
Atlanta Humane Society		$ 25.00
Georgia Cumberland Conference		25.00
Exchange Club		40.00
Oglethorpe Boosters Club		50.00
Marion Howard School		236.48
Junior League		75.00
Florence Crittenton School		15.00
Empty Stocking Fund		750.00
Buckhead Lions Club		70.00
North Fulton Fine Arts Foundation		25.00
Christian City		100.00
Salvation Army		50.00
Allen Foundation:		
Cash	$10,000.00	
100 shares Xerox Corporation - cost 2-24-61 $641.98, fair market value 1-29-65	10,800.00	20,800.00
		$ 22,261.48
Less contributions carryover - federal		1,659.10
CONTRIBUTIONS - FEDERAL		$ 20,602.38

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

BALANCE SHEETS

	6-30-64	6-30-65
Other investments:		
Marketable securities	$161,428.56	$154,222.25
Investments in subsidiaries	318,525.55	351,141.38
	$479,954.11	$505,363.62
Other assets:		
Cash value of life insurance	$162,645.52	$176,864.59
Prepaid expenses	39,695.35	28,811.61
Leasehold improvements - net	23,096.13	19,829.13
	$225,437.00	$225,505.33
Other current liabilities:		
Income taxes	$180,752.36	$151,521.21
Other taxes	76,274.09	89,819.67
Accrued salaries and wages	10,037.53	16,557.54
Accrued interest	432.67	414.69
Accrued profit sharing pension contribution	59,257.06	59,786.78
	$326,753.71	$318,099.89

STATEMENT OF RETAINED EARNINGS

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

Retained earnings, June 30, 1964			$1,997,242.28
Add:			
Net income for the year ended June 30, 1965		$232,584.98	
Excess of fair market value over cost of 100 shares Xerox Corp. stock donated to Allen Foundation:			
Fair market value 1-29-65	$10,800.00		
Cost	641.98	10,158.02	
Revenue Agent's adjustments for F.Y.E. 6-30-63 and 6-30-64:			
Capitalization of assets previously charged to expense	$43,696.12		
Reduction in allowable depreciation	685.58		
Reversal of accrual of contribution to Allen Foundation not timely paid	7,500.00	51,881.70	294,624.70
			$2,291,866.98
Deduct:			
Prior years' income taxes:			
Federal	$33,496.07		
Georgia	2,676.50	$ 36,172.57	
Dividends paid:			
Cash	$48,945.30		
870 shares Xerox Co. stock - at cost	6,564.34	55,509.64	91,682.21
RETAINED EARNINGS - JUNE 30, 1965			$2,200,184.77

STATEMENT OF PROPERTY PLANT AND EQUIPMENT

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

Statement of Property, Plant & Equipment
Ivan Allen Co
Years ended June 30, 1965

	Assets				Allowance for depreciation				Cost less depreciation
	Balance Jun.30,1964	Additions	Disposals	Balance Jun.30,1965	Balance Jun.30,1964	Provision	Deduction	Balance Jun.30,1965	Jun.30,1965
Rental property:									
Land									
972 Marietta St.	$ 35,250.00	$ -	$ -	$ 35,250.00	$ -	$ -	$ -	$ -	$ 35,250.00
1740 Peachtree St.	120,000.00	-	-	120,000.00	-	-	-	-	120,000.00
221 Ivy St.	74,000.00(c)	76,000.00	-	150,000.00	-	-	-	-	150,000.00
660 Forrest Road	72,000.00	-	-	72,000.00	-	-	-	-	72,000.00
Buildings:									
972 Marietta St.:									
1948 - 3%	81,997.69	-	-	81,997.69	39,768.85	2,459.93	-	42,228.78	39,768.91
Improvements:									
Sprinkler - 1948 - 5%	9,937.00	-	-	9,937.00	7,436.16	496.85	-	7,933.01	2,003.99
Roof - 1955 - 10%	4,097.84	-	-	4,097.84	3,892.91	204.93	-	4,097.84	-
1740 Peachtree St.:									
1959 - 5% - (A)	183,078.48	-	-	183,078.48	44,957.41	6,906.05	-	51,863.46	131,215.02
Improvements - 1959 - (A):									
Elevator - 10%	15,500.00	-	-	15,500.00	6,805.02	869.50	-	7,674.52	7,825.48
Blacktop - 13.3%	6,900.00	-	-	6,900.00	3,747.42	419.29	-	4,166.71	2,733.29
Electrical - 13.3%	31,000.00	-	-	31,000.00	16,831.40	1,884.42	-	18,715.82	12,284.18
Plumbing, heating and air-conditioning - 13.3%	63,000.00	-	-	63,000.00	34,105.73	3,842.94	-	37,948.67	25,051.33
Carpets, etc. - 20%	9,000.00	-	-	9,000.00	6,345.79	530.84	-	6,876.63	2,123.37
221 Ivy St.:									
1960 - 4%	177,012.25(c)	(76,000.00)	-	101,012.25	24,781.72	4,040.49(c)	6,300.84	22,521.37	78,490.88
1963 addition - 4%	428,754.03(c)	16,011.11	-	444,765.14	25,725.24	17,790.61(c)	(1,189.02)	44,704.87	400,060.27
1963 roof - 5%	- (c)	8,156.00	-	8,156.00	-	407.80(c)	(407.80)	815.60	7,340.40
1963 waterproofing and sign 20%	- (c)	9,190.54	-	9,190.54	-	1,838.10(c)	(2,103.67)	3,941.77	5,248.77
660 Forrest Road:									
1964 - 5% - (A)	121,058.94(c)	3,500.00	-	124,558.94	-	6,227.95	-	6,227.95	118,330.99
	$1,432,586.23	$36,857.65	$ -	$1,469,443.88	$214,397.65	$47,919.70	$ 2,600.35	$259,717.00	$1,209,726.88
Furniture and fixtures:									
Store - 1961-2 25% (A)	$ 249.24	$ -	$ -	$ 249.24	$ 124.12	$ 31.28	$ -	$ 155.40	$ 93.84
- 1962-3 25% (A)	161.41	-	-	161.41	55.49	26.48	-	81.97	79.44
Plant - 1958 20% (A)	3,562.74	-	-	3,562.74	2,722.18	168.11	-	2,890.29	672.45
Office - 1956 20% (A)	4,736.12	-	-	4,736.12	4,020.98	143.03	-	4,164.01	572.11
- 1957 20% (A)	388.88	-	-	388.88	314.82	14.81	-	329.63	59.25
- 1959 20% (A)	10,746.29	-	7,955.50	2,790.79	8,210.92	131.57	6,078.00	2,264.49	526.30
- 1961 20% (A)	3,675.00	-	-	3,675.00	1,981.56	338.69	-	2,320.25	1,354.75
- 1962 25% (A)	1,673.01	-	-	1,673.01	833.13	209.97	-	1,043.10	629.91
- 1964 25% (A)	3,960.00	-	-	3,960.00	495.00	866.25	-	1,361.25	2,598.75
- 1965 25% (B	-	7,439.50	-	7,439.50	-	2,083.06	-	2,083.06	5,356.44
	$ 29,152.69	$ 7,439.50	$7,955.50	$ 28,636.69	$ 18,758.20	$ 4,013.25	$ 6,078.00	$ 16,693.45	$ 11,943.24

STATEMENT OF PORPERTY PLANT AND EQIUPMENT - CONTINUED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

	Assets				Allowance for depreciation				Cost less depreciations
	Balance Jun.30,1964	Additions	Disposals	Balance Jun.30,1965	Balance Jun.30,1964	Provision	Disposals	Balance Jun.30,1965	Jun.30,1965
Automobiles and trucks:									
Salesmen:									
1961 Falcon - 66 2/3% (A)	$ 1,606.78	$ -	$ -	$ 1,606.78	$ 1,472.88	$ 89.25	$ -	$ 1,562.13	$ 44.65
1962 Chevrolet - 66 2/3% (A)	3,471.22	-	-	3,471.22	2,699.84	514.50	-	3,214.34	256.88
1964 Oldsmobile - 33 1/3%	3,114.68	-	-	3,114.68	1,048.22	1,028.22	-	2,076.44	1,038.24
1964 Chevrolet - 33 1/3%	2,999.11	-	-	2,999.11	498.18	999.70	-	1,497.88	1,501.23
1964 Cadillac	5,706.21	-	5,706.21	-	951.03	-	951.03	-	-
1964 Ford Mustang	3,281.24	-	3,281.24	-	546.82	-	546.82	-	-
1965 Cadillac - 33 1/3%	-	6,581.09	-	6,581.09	-	2,193.70	-	2,193.70	4,387.39
Furniture department:									
1960 G.M.C. truck - 50% (A)	3,783.11	-	-	3,783.11	3,605.77	88.67	-	3,694.44	88.67
1962 Ford van	1,695.30	-	1,695.30	-	1,554.03	-	1,554.03	-	-
1963 Chevrolet stake - 66 2/3% (A)	1,917.35	-	-	1,917.35	1,065.19	568.20	-	1,633.39	283.96
1964 G.M.C. truck - 33 1/3%	5,815.29	-	-	5,815.29	1,938.23	1,938.23	-	3,876.46	1,938.83
1965 Dodge van - 33 1/3%	-	1,962.10	-	1,962.10	-	654.03	-	654.03	1,308.07
Printing department:									
1962 Chevrolet panel - 66 2/3% (A)	2,230.61	-	-	2,230.61	1,735.41	330.10	-	2,065.51	165.10
1962 Chevrolet S.W.	2,330.31	-	2,330.31	-	2,136.13	-	2,136.13	-	-
1964 Chevrolet S.W. - 33 1/3%	2,457.03	-	-	2,457.03	409.47	849.01	-	1,258.48	1,198.55
Store delivery:									
1962 Ford van 66 2/3% (A)	1,476.20	-	-	1,476.20	1,353.19	82.00	-	1,435.19	41.01
1962 Ford van 66 2/3% (A)	1,433.31	-	-	1,433.31	1,313.87	79.50	-	1,393.37	39.94
1962 Chevrolet stake - 66 2/3% (A)	1,772.89	-	-	1,772.89	1,379.30	262.25	-	1,641.55	131.34
1962 Corvan	2,253.05	-	2,253.05	-	2,065.31	-	2,065.31	-	-
1962 Chevrolet panel - 66 2/3% (A)	2,062.21	-	2,062.21	-	1,604.39	-	1,604.39	-	-
1962 Chevrolet panel - 66 2/3% (A)	1,682.13	-	-	1,682.13	1,308.70	248.85	-	1,557.55	124.58
1963 Ford van - 66 2/3% (A)	2,012.38	-	-	2,012.38	1,565.63	298.00	-	1,863.63	148.75
1964 Chevrolet panel - 33 1/3%	1,868.96	-	-	1,868.96	311.55	623.00	-	934.55	934.41
1964 Ford van - 33 1/3%	-	2,054.75	-	2,054.75	-	342.45	-	342.45	1,712.30
1965 Chevrolet panel - 33 1/3%	-	2,358.31	-	2,358.31	-	373.05	-	373.05	1,985.26
1965 Chevrolet panel - 33 1/3%	-	2,168.93	-	2,168.93	-	361.50	-	361.50	1,807.43
1965 Chevrolet panel - 33 1/3%	-	1,836.34	-	1,836.34	-	306.06	-	306.06	1,530.28
Quick-Copy department:									
1965 Ford - 33 1/3%	-	1,392.00	-	1,392.00	-	232.00	-	232.00	1,160.00
	$54,969.37	$18,353.52	$17,328.32	$55,994.57	$30,563.14	$12,462.27	$8,857.71	$34,167.70	$21,826.87

STATEMENT OF PROPERTY PLANT AND EQUIPMENT - CONTINUED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

	Assets				Allowance for depreciation				Cost less depreciation
	Balance Jun.30,1964	Additions	Disposals	Balance Jun.30,1965	Balance Jun.30,1964	Provision	Disposals	Balance Jun.30,1965	Jun.30,1965
chinery and equipment:									
Printing plant:									
6 1/4%:									
1946	$ 295.00	$ -	$ 295.00	$ -	$ 285.82	$ 9.18	$ 295.00	$ -	$ -
1947	11,899.60	-	-	11,899.60	11,699.60	-	-	11,699.60	200.00
1947	29,000.00	-	-	29,000.00	28,500.00	-	-	28,500.00	500.00
1949	7,200.00	-	7,200.00	-	7,038.00	162.00	7,200.00	-	-
1950	455.00	-	-	455.00	412.38	28.44	-	440.82	14.18
1951	12,875.20	-	-	12,875.20	10,863.45	804.70	-	11,668.15	1,207.05
20% (A):									
1954	42,135.00	-	-	42,135.00	37,836.99	859.60	-	38,696.59	3,438.41
1956	16,600.00	-	-	16,600.00	14,093.38	501.32	-	14,594.70	2,005.30
1957	3,858.00	-	-	3,858.00	3,129.82	145.64	-	3,275.46	582.54
1958	26,527.99	-	-	26,527.99	20,269.24	1,251.75	-	21,520.99	5,007.00
1961	10,225.00	-	-	10,225.00	4,335.40	1,177.92	-	5,513.32	4,711.68
1963	35,550.18(C)	6,838.47	-	42,388.65	8,756.79	6,343.42(C)	(1,914.77)	17,014.98	25,373.67
1964	38,414.50	-	-	38,414.50	5,641.45	6,554.61	-	12,196.06	26,218.44
1965 - (B)	-	9,012.50	-	9,012.50	-	1,362.14	-	1,362.14	7,650.36
Quick-copy department:									
20% - (A):									
1956	2,687.18	-	-	2,687.18	2,179.99	101.44	-	2,281.43	405.75
1956	3,173.42	-	-	3,173.42	2,694.24	95.83	-	2,790.07	383.35
1957	1,372.00	-	-	1,372.00	1,113.04	51.79	-	1,164.83	207.17
1958	2,856.74	-	-	2,856.74	2,182.74	134.80	-	2,317.54	539.20
	$ 245,124.81	$15,850.97	$ 7,495.00	$ 253,480.78	$161,032.33	$19,584.58	$ 5,580.23	$175,036.68	$ 78,444.10
	$1,761,833.10	$78,501.64	32,778.82	$1,807,555.92	$424,751.32	$83,979.80	$23,116.29	$485,614.83	$1,321,941.09

A) Declining balance method
B) Additional first year depreciation taken on first $10,000.00.
C) R.A.R. adjustments

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Schedule I.—SPECIAL DEDUCTIONS
(Small business investment companies and members of affiliated groups not filing a consolidated return—see instructions)

Dividends-received: (a) 85 percent of column 2, Schedule C		50,399.59
(b) 61.2 percent of column 3, Schedule C (see instructions for fiscal year)		
(c) 85 percent of dividends received from certain foreign corporations		
Total dividends-received deductions (sum of lines 1 (a), (b), and (c) but not to exceed 85 percent of the excess of line 28, page 1 over line 4 of this schedule). (The 85-percent limitation does not apply to a year in which a net operating loss occurs.)		50,399.59
Dividends paid on certain preferred stock of public utilities (see instructions in case of net operating loss or fiscal year)		
Western Hemisphere trade corporations (not allowable in year of net operating loss—see inst. for fiscal year)		
Total special deductions—Add lines 2, 3, and 4. Enter here and on line 29(b), page 1		50,399.59

SCHEDULE J.—TAX COMPUTATION
(Component members of controlled corporate group use Form 3920 to compute your tax)

1. Taxable income (line 30, page 1)		
2. If amount of line 1 is:		
(a) Not over $25,000—Enter 22 percent of line 1		
(b) Over $25,000—Enter 50 percent of line 1		
Subtract $7,000 and enter difference	7,000.00	
3. Income tax (line 2, or line 22 of separate Schedule D, whichever is lesser, or fiscal year tax computation)		161,490.59
4. Foreign tax credit (attach Form 1118)		
5. Balance (line 3 less line 4)		161,490.59
6. Investment credit (attach Form 3468)		1,151.64
7. Balance of income tax (line 5 less line 6)		160,338.95
8. Tax under section 541 of the Internal Revenue Code (from Schedule 1120 PH)		
9. Tax from recomputing prior year investment credit (attach statement)		
10. Total tax—Add lines 7, 8, and 9. Enter here and on line 31, page 1		160,338.95

SCHEDULE FY
(Fiscal year tax computation schedule for taxpayers with taxable income over $25,000)

1. Taxable income (line 30, page 1)		
2. 50 percent of line 1		
3. Subtract $7,000 and enter difference	7,000.00	
4. 48 percent of line 1		
5. Subtract $6,500 and enter difference	6,500.00	
6. Amount on line 2 or alternative tax (separate Schedule D) multiplied by the number of days in the taxable year prior to January 1, 1965, divided by the total number of days in the taxable year		82,980.79
7. Amount on line 3 or alternative tax (separate Schedule D) multiplied by the number of days in the taxable year after December 31, 1964, divided by the total number of days in the taxable year		78,509.80
8. Income tax—Add lines 4 and 5. Enter here and on line 3, Schedule J		161,490.59

1. Date incorporated 12-5-02

2. (1) Did the corporation at the end of the taxable year own directly or indirectly 50 percent or more of the voting stock of a domestic corporation? Yes ☒ No ☐

(2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50 percent or more of the corporation's voting stock? Yes ☐ No ☒

(For rules of attribution, see section 267 (c).)

If the answer to (1) or (2) is "Yes," attach separate schedule showing:

(a) name, address, and employer identification no.; and (b) percentage owned.

If the answer to (1) above is "Yes," include the income (or loss) from line 30, page 1, Form 1120 of such corporation for the taxable year ending with or within your taxable year.

3. Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒

If "Yes," see inst. K. Enter amount here

4. Did you at any time during the year own directly or indirectly any stock of a foreign corporation? Yes ☐ No ☒

If "Yes," attach statement as required by instruction N.

5. Amount of income (or loss) for: 1961 427,727.91; 1962 374,114.60; 1963 437,962.77

M. Did you claim a deduction for expenses connected with:

(1) A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was the principal business.) Yes ☐ No ☒

(2) The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐ which was used by customers or employees or members of their families? (Other than use by employees while in business travel status.) Yes ☐ No ☒

(3) The attendance of your employees' families at conventions or business meetings? Yes ☐ No ☐

(4) Vacations for employees or members of their families? (Other than amount reported on Form W-2.) Yes ☐ No ☒

N. Refer to instructions and state the:

Principal business activity Office outfitters

Principal product or service

O. Were you a member of a controlled group subject to the provisions of section 1561? Yes ☐ No ☒, or section 1562? Yes ☒ No ☐

If so, check type of relationship: 1. parent-subsidiary ☒; 2. brother-sister ☐; 3. combination of (1) and (2) ☐ (see section 1563).

P. Were you in 1963 a component member of a controlled group as defined in section 1563? Yes ☒ No ☐

If so, were you represented in a consolidated return? Yes ☐ No ☒

16—76350-1

Form 1120 (1964) Page 4

Schedule L.—BALANCE SHEETS (See Instructions)

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1. Cash		404,114.09		319,726.66
2. Notes and accounts receivable	674,774.73		776,084.23	
(a) Less: Reserve for bad debts		674,774.73		776,084.23
3. Inventories		516,537.81		569,214.25
4. Investments in Government obligations				
5. Other current assets (attach schedule)				
6. Loans to stockholders				
7. Other investments (attach schedule)		479,954.11		505,363.62
8. Buildings and other fixed depreciable assets	1,460,583.10		1,430,305.92	
(a) Less: Accumulated amortization and depreciation	424,751.32	1,035,831.78	485,614.83	944,691.09
9. Depletable assets				
(a) Less: Accumulated depletion				
10. Land (net of any amortization)		301,250.00		377,250.00
11. Intangible assets (amortizable only)				
(a) Less: Accumulated amortization				
12. Other assets (attach schedule)		225,437.00		225,505.33
13. Total assets		3,637,899.52		3,717,835.18
LIABILITIES AND CAPITAL				
14. Accounts payable		560,636.95		460,409.29
15. Mortgages, notes, and bonds payable in less than 1 year		14,125.35		14,922.11
16. Other current liabilities (attach schedule)		326,753.71		318,099.89
17. Loans from stockholders				
18. Mortgages, notes, and bonds payable in 1 year or more		305,787.59		290,865.48
19. Other liabilities (attach schedule)				
20. Capital stock: (a) Preferred stock				
(b) Common stock	376,860.00	376,860.00	376,860.00	376,860.00
21. Paid-in or capital surplus (attach reconciliation)		56,493.64		56,493.64
22. Surplus reserve (attach schedule)				
23. Earned surplus and undivided profits		1,997,242.28		2,200,184.77
24. Total liabilities and capital		3,637,899.52		3,717,835.18

ITEMIZED ENTRIES MADE BELOW MUST BE IDENTIFIED BY ACCOUNT

Schedule M-1.—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1. Net income per books	232,584.98	7. Income recorded on books this year not included in this return (itemize) Increase in C.S.V. life insurance in excess of cost	1,223.25
2. Federal income tax	161,101.08		
3. Excess of capital losses over capital gains			
4. Taxable income not recorded on books this year (itemize)		8. Deductions in this tax return not charged against book income this year (itemize) Prior years state income taxes	2,676.50
5. Expenses recorded on books this year not deducted in this return (itemize) excess contributions	1,659.10	9. Total of lines 7 and 8	3,899.75
6. Total of lines 1 through 5	395,345.16	10. Income (line 28, page 1)—line 6 less 9	391,445.41

Schedule M-2.—ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS PER BOOKS (line 23, page 4)

1. Balance at beginning of year		5. Distributions: (a) Cash	
2. Net income per books		(b) Stock	
3. Other increases (itemize)		(c) Property	
		6. Other decreases (itemize)	
4. Total of lines 1, 2, and 3		7. Total of lines 5 and 6	
		8. Balance end of year (line 4 less 7)	Schedule

☆ U.S. GOVERNMENT PRINTING OFFICE : 1964 O 745-492

FORM **2950** (Rev. July 1962)
U.S. Treasury Department
Internal Revenue Service

STATEMENT IN SUPPORT DEDUCTION
For Payments to an Employees' Pension, Profit-Sharing, Stock Bonus Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Employer taxable year ended: June 30, 1965

Employer identification No.: 58-0136820

PART I.—DEDUCTION CLAIMED UNDER SECTION 404(a)(1), (2), (3), or (7)

1. Name of plan:
Profit sharing pension plan of Ivan Allen Company and subsidiaries

2. Type of plan:
☐ Pension or annuity ☒ Profit-sharing ☐ Stock bonus

3. If a favorable determination letter has been received indicating that this plan qualifies under section 401 of the Code, give date of most recent determination letter
July 17, 1956

4. Medium of funding: (Check each applicable box)

(a) Trusteed plan:
- ☐ Individual annuity contracts
- ☒ Individual contracts containing life insurance
- ☐ Self-administered
- ☐ Other (Specify)

(b) Nontrusteed plan:
Group contract:
- ☐ Deposit administration
- ☐ Deferred annuity
- ☐ Group permanent
- ☐ Individual annuity contracts
- ☐ Other (Specify)

5. Total number of employees as of the close of the year for each of the following groups based on reasonable estimates:

(a) Employees ineligible because of requirements as to:

(i) Temporary, seasonal, part-time	-	(iv) Minimum age and not included in (i) through (iii)	6
(ii) Job classification and not included in (i) (e.g., hourly paid, etc.)	-	(v) Minimum pay (Solely)	
(iii) Length of service and not included in (i) or (ii)	197	(vi) Other and not included in (i) through (v) (Specify)	
		(vii) Totals ((i) through (vi))	

(b) Employees eligible for coverage but not covered by plan
(c) Employees covered by plan: 146
(d) Total of all employees (lines (a) (vii), (b), and (c)): 349
(e) If you claim that the requirements of section 401(a)(3)(A) are satisfied, check here ☒ and attach necessary data and computation to substantiate.

6. In the case of:
(a) Trust—Attach a detailed balance sheet and a detailed statement of receipts and disbursements.
(b) Nontrusteed Annuity Plan—Attach a detailed statement including for each insurer (1) the name of the insurer, (2) the contributions paid by the employer, (3) the contributions paid by the employees, and (4) the amounts and kinds of premium refunds or similar credits made available and the disposition of such credits.
(c) Pension or Annuity Plan—For each year a summary of the costs or liabilities and adjustments under the plan based on the application of the methods, factors, and assumptions used under the plan must be submitted in sufficient detail to permit ready verification of the reasonableness thereof.

7. (a) Total nondeferred compensation paid or accrued for all employees under the plan		$1,295,802.54
(b) Total nondeferred compensation paid or accrued for all employees		$2,125,113.82
(c) Total amount of contributions allocated for the benefit of employees, former or retired employees, or their beneficiaries (including any insurance provided thereby or directly related thereto)	$ -	
Less: Employee contributions	-	$ -
(d) If a profit-sharing or stock bonus plan: (i) Amount originally allocated in the year		$ 74,786.78
(ii) Amount reallocated in the year (forfeitures)		$ 19,263.31

8. Determination of total contributions subject to limitations:

(a) Contributions by the employer during taxable year (from schedule A, Part II)	$ 74,786.78
(b) Contribution carryover from previous years (from schedule B, Part II)	$
(c) Total contributions subject to limitations ((a) plus (b))	$ 74,786.78
(d) (i) Total amount deductible without regard to section 404(a)(7) (lesser of (c) or applicable limitations)	$ 74,786.78
(ii) Carryover to future years ((c) less (d)(i))	$

9. Statement required with respect to each of the 25 highest-paid employees covered by the plan OR participating stockholder-employees who own more than 5 percent of the ·ng stock and who are among the 25 highest paid whichever is applicable. (See instructions.)

	EMPLOYEE NAME (The letters on each line identify the line entries for the employee in the following sections of the form) (a)	Is Employee an Officer (b) Yes	(b) No	Percent of Voting Stock Owned (see instructions) (c)	Are Principal Duties Supervisory (d) Yes	(d) No	Year of Birth (e)	Length of Service for Employer (years) (f)
A	Ivan Allen, Sr.	X		31.20	X		1876	64
B	Ivan Allen, Jr.		X	45.46	X		1911	34
C	W. H. Glenn, Jr.	X		6.44	X		1913	14
D								
E								
F								
G								
H								
I								
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Y								

EMPLOYEE	NONDEFERRED COMPENSATION: Basic Compensation and Overtime (g)	Other Direct Payments (h)	Other Than Cash (i)	TOTAL (j)	Amount Allocated for the Benefit of the Employee or Beneficiary (Include any insurance provided thereby or directly related thereto), less Employee's Contributions: Under Each Other Plan of Deferred Compensation (k)	Under This Plan (l)	If Profit-Sharing or Stock Bonus Plan: Amount Allocated in the Year Originally (m)	Amount Reallocated in the Year (n)
A	12,525			12,525	-	1,333.44	1,060.31	273.13
B	15,025			15,025	-	1,116.03	887.44	228.59
C	31,025			31,025		971.08	772.19	198.89
D								
E								
F								
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7

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

FORM 2950 - PART I SEC. 7 (d) (i)

	Charged to expense	Credited to employees
Ivan Allen Company - Atlanta, Ga.	$60,000.00	$ 75,454.59
- Albany, Ga.	841.34	1,058.05
- Athens, Tenn.	795.23	1,000.07
- Augusta, Ga.	1,365.73	1,717.51
- Chattanooga, Tenn.	1,140.99	1,434.89
- Columbus, Ga.	772.19	971.08
- Gainesville, Ga.	1,434.88	1,804.47
- Greenville, S. C.	3,641.95	4,580.04
- Huntsville, Ala.	731.85	920.35
- Macon, Ga.	2,091.82	2,630.61
- Rome, Ga.	1,970.80	2,478.43
	$74,786.78	$ 94,050.09
Forfeitures	19,263.31	-
	$94,050.09	$ 94,050.09

TRUST FUND BALANCE SHEET

ASSETS

Cash and due from employer	$ 81,629.85
Securities (at cost)	748,248.86
Accrued income	3,854.92
	$833,733.63

LIABILITIES

Insurance premiums payable	$ 18,265.20
Allocated to members	815,468.43
	$833,733.63

TRUST FUND INCOME

Employer contribution		$ 74,786.78
Dividends and interest received		29,034.18
Insurance refunds		2,706.52
		$106,527.48
Deduct:		
Loss on sale of securities	$ 280.14	
Insurance premiums paid	19,574.88	
Benefits to members	15,949.01	35,804.03
		$ 70,723.45

Y								
Total	58,575			58,575		20.55	2,719.94	700.61

EMPLOYEE	EMPLOYEE CONTRIBUTIONS UNDER THIS PLAN (c)	IF PENSION OR ANNUITY PLAN: Retirement Age (p)	Expected Date of Retirement (q)	Form of Retirement Benefit (r)	Annual Rate or Amount of Retirement Benefit (s)	Aggregate of All of the Employee's Contributions Under the Plan (t)
A						
B						
C						
D						
E						
F						
G						
H						
I						
J						
K						
L						
M						
N						
O						
P						
Q						
R						
S						
T						
U						
V						
W						
X						
Y						
Total						

10. Have you attached copies of the following which you are required to submit for the first taxable year for which a deduction is claimed or for subsequent years if there is any change in the plan, instruments, methods, factors or assumptions?

ITEM	YES	NO
a. Verified copies of all instruments constituting the plan, including trust indentures, group annuity contracts, specimen copy of each type of individual contract and specimen copy of formal announcement and comprehensive detailed description to employees, with all amendments to any such instruments.	X	
b. A statement which sets forth: (1) Name or names of employers.	X	
(2) Effective date of the plan and any amendments thereto.	X	
(3) Method of distribution or of disbursing benefits (whether by trustee, insurance company, or otherwise).	X	
(4) Dates when the instruments or amendments were executed.	X	
(5) Date of formal announcement.	X	
(6) Dates when comprehensive detailed description of the plan and of each amendment thereto were made available to employees generally.	X	
(7) Date when plan was put into effect.	X	
(8) Date when trust or contract and any amendments thereto were put into effect so that contributions thereunder were irrevocable.	X	

ITEM	YES	NO
c. A summary of the provisions and rules relating to: (1) Employee eligibility requirements for participation in the plan.	X	
(2) Employee contributions.		X
(3) Employer contributions.	X	
(4) The basis or formula for determining the amount of each type of benefit and the requirements for obtaining such benefits and the vesting conditions.	X	
(5) The discontinuance or modification of the plan and distributions or benefit payments upon liquidation or termination.		X
d. If pension or annuity plan, a detailed description of all the methods, factors, and assumptions used in determining costs and in adjusting the cost for actual experience under the plan (including any loadings, contingency reserves, or special factors and the basis of any insured costs or liabilities involved therein) explaining their source and application in sufficient detail to permit ready analysis and verification thereof, and in the case of a trust, a detailed description of the basis used in valuing the investments held.		X

PART II.—DETERMINATION OF ALLOWABLE DEDUCTION

Schedule A—Employer Contributions (see instructions)

Check whether contributions were made in: ☒ Cash ☐ Other than cash

Dates Paid	Amount	Dates Paid	Amount
Paid	15,000.00		
Accrued			
6-28-65			
Paid 9-13-65	59,786.78		
		Total	74,768.78

Schedule F Contribution Carryover

(Complete the following each of the six taxable years, prior to the current year, without regard to section 404(a)(7))

Year Ended (a)	Amount Contributed (b)	Amount Deductible (c)	Cumulative Carryover To Succeeding Years (d)
....., 19....			
....., 19....			
....., 19....			
....., 19....			
....., 19....			
....., 19....			

Cumulative carryover equals column (d) from previous year plus column (b) for current year, less column (c) for current year. (See instructions.)

SCHEDULE C.—PENSION TRUSTS AND ANNUITY PLANS (Complete either I or II)

I. Section 404(a)(1)(A) and (B) Limitations

1. Total nondeferred compensation paid or accrued during taxable year to all covered employees (from line 7(a) Part I) ..... $
2. Limitation under section 404(a)(1)(A)—5 percent of line 1 (unless limitation has been reduced) ..... $
3. Limitation under section 404(a)(1)(B) if aggregate cost method is used (See Regs., section 1.404(a)-5(c)) ..... $
4. Total of lines 2 and 3 if aggregate cost method is used ..... $
5. (a) Gross annual premiums under "Individual Contract Plan" (see instructions) ..... $
   (b) Less: Dividends and other credits ..... $
   (c) Net premiums due (line 5(a) less line 5(b)) ..... $

II. Section 404(a)(1)(C) Limitations

1. Normal cost (current year's service cost) ..... $
2. Total past service or supplemental base ..... $
3. 10 percent of line 2 (see instructions) ..... $
4. Total of lines 1 and 3 ..... $
5. Less: Credits and gains ..... $
6. Net limitation (line 4 less line 5) ..... $

SCHEDULE D.—PROFIT-SHARING AND STOCK BONUS PLANS (Section 404(a)(3)(A) Limitations)

1. Total nondeferred compensation paid or accrued for all employees under the plan (from line 7(a), Part I) ..... $ 1,295,802.54
2. Limitation—15 percent of compensation shown on line 1 ..... $ 194,370.38
3. Contributions by the employer during the year (from line 8(a), Part I) ..... $ 74,786.78
4. Contribution carryover from previous years (from line 8(b), Part I) ..... $
5. Total contributions subject to limitation (from line 8(c), Part I) ..... $ 74,786.78
6. Credit carryover (Attach computations) ..... $ -
7. Limitations: Primary (lesser of line 5, or line 2) or secondary* ..... $ 74,786.78

*Secondary (smallest of line 3, line 2 plus line 6, or two times line 2). Secondary limitation applies only if there is a credit carryover on line 6.

SCHEDULE E.—Section 404(a)(7) Limitations. (See instructions)

1. Amount deductible for year under section 404(a)(7):
   (a) 30 percent of covered compensation in year ..... $
   (b) (i) 25 percent of covered compensation in year ..... $
   (ii) Total amount otherwise deductible for year ..... $
   (iii) Smaller of (i) or (ii) ..... $
   (iv) Carryover from prior years under section 404(a)(7) (attach computation) ..... $
   (v) Sum of (iii) and (iv) ..... $
   (c) Amount deductible (lesser of (a) or (b)(v)) ..... $
2. Carryover to succeeding years under section 404(a)(7) (line 1(b)(iv) plus line 1(b)(ii) less line 1(c)) ..... $

PART III.—DEDUCTION CLAIMED UNDER SECTION 404(a)(5)

1. Type of plan: ☐ Pension or annuity ☐ Profit-sharing ☐ Stock bonus ☐ Other plan of deferred compensation
2. The amount of the deduction ..... $
3. Total number of employees covered .....
4. Total number of employees employed .....
5. Was the amount deducted paid:
   ☐ Directly to an employee, a former employee, or his beneficiary
   ☐ To a trust ☐ To an insurance company ☐ To another person

6. Have you attached a statement containing such information as is necessary to show that the deduction is not allowable under section 404(a)(1), (2), (3), and (7); that the amount paid is an ordinary and necessary expense or an expense for the production of income and that the employees' rights to, or derived from, the employer's contribution or deferred compensation were nonforfeitable at the time the contribution or compensation was paid? ☐ Yes ☐ No

☆ U.S. GOVT. PRINTING OFFICE : 1967—O-691-599

FORM 3468
U.S. Treasury Department
Internal Revenue Service

COMPUTATION OF INVESTMENT CRE. —1964

or taxable year beginning July 1, 1964, ending June 30, 1965

TO BE ATTACHED TO YOUR TAX RETURN

Name (as shown on page 1 of your tax return)

IVAN ALLEN COMPANY

Address (number and street)

BOX 1712

City or town, and State

ATLANTA, GA. 30301

1. Qualified investment in new or used property

NOTE: Include your share of investment in property by a partnership, estate, trust, small business corporation, or lessor.

Type of property	Line	(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) Qualified investment (column 2 x column 3)
NEW PROPERTY	(a)	4 to 6		33⅓	
	(b)	6 to 8		66⅔	
	(c)	8 or more	16,452.00	100	16,452.00
USED PROPERTY (for dollar limitation see instructions)	(d)	4 to 6		33⅓	
	(e)	6 to 8		66⅔	
	(f)	8 or more		100	

2. Total qualified investment—add lines 1(a) through (f)	16,452.00
3. Tentative investment credit—7% of line 2 (for public utility property, enter 3% of line 2)	1,151.64
4. Carryback and carryover of unused credit(s) (attach statement)	
5. TOTAL (line 3 plus line 4)	1,151.64

COMPUTATION OF TAX FOR PURPOSES OF LIMITATION

6. (a) Individuals (enter amount from line 12, page 1, Form 1040)	
(b) Estates and trusts (enter amount from line 25 or 26, page 1, Form 1041)	161,490.59
(c) Corporations (enter amount from line 5, Tax Computation Schedule, Form 1120)	
7. Individuals, estates and trusts:	
Less: (a) Foreign tax credit	
(b) Dividends received credit	
(c) Retirement income credit	
(d) Total (add lines (a), (b), and (c))	
8. Balance (line 6 less line 7(d))	161,490.59

LIMITATION BASED ON AMOUNT OF TAX

(Married persons filing separately, affiliated groups, estates and trusts—see instructions)

9. (a) Enter amount on line 8 or $25,000, whichever is lesser	25,000.00
(b) If line 8 is in excess of $25,000, enter 25% of the excess	34,122.65
(c) Total (add lines (a) and (b))	59,122.65
10. Investment credit (enter amount on line 5 or 9(c), whichever is lesser)	1,151.64

SCHEDULE A

If any part of your investment in 1 above was made by a partnership, estate, trust, small business corporation, or lessor complete the following:

Name (Partnership, estate, trust, etc.)	Address	Property		
		New	Used	Life years
		$	$	

16—78379-1

GENERAL INSTRUCTIONS

A. Who Must File.—Any individual, estate, trust, or corporation claiming an investment credit against its tax must attach this form to its income tax return. Partnerships and small business corporations are not required to file this form because the credit is claimed by the partner or shareholder. However, partnerships and small business corporations must attach a statement to their returns showing the allocation of investment to the partners or shareholders by amount, type and life of property as shown in item 1 of this form. Estates and trusts which apportion the investment between the estate or trust and the beneficiaries should in addition to filing this form attach a statement showing the allocation of the investment among the beneficiaries.

B. When Allowed.—A credit is allowed against your tax for investment in certain depreciable property having an estimated useful life of 4 years or more. The credit is allowed for the first year property is placed in service, even though under the depreciation convention used you may not be able to claim a deduction for depreciation on the property until the following year.

C. Property Defined.—The investment credit is applicable to (a) tangible personal property, (b) real property (except for buildings and their structural components) if used as an integral part of manufacturing, production or extraction, or used as a research or storage facility in connection with these activities, and (c) elevators and escalators, if their construction, reconstruction, or erection is completed by the taxpayer after June 30, 1963, or if they are acquired after June 30, 1963, and their original use commences with the taxpayer and commences after such date.

The investment credit is not applicable to (1) certain property which is used predominantly outside the United States; (2) property used for lodging or in connection with furnishing lodging, except (a) property used in certain commercial facilities located therein (such as a restaurant) or (b) property used by a hotel or motel; (3) property used by a tax-exempt organization (other than in a business to which the unrelated business income tax applies); (4) property used by governmental units; (5) livestock (including racehorses).

D. Election for Leased Property.—A lessor may elect to treat an investment in new property as if made by the lessee instead of the lessor. If the lessor makes this election, then the lessee is treated as if he had acquired the property (see section 48(d) for determination of basis).

Where a lessor makes an election with respect to leased property, such election must be made in accordance with section 48(d) and the regulations thereunder.

E. Replacement Property.—Where insured property is lost or destroyed as a result of a casualty or is stolen, reinvestment of the insurance proceeds in replacement property may not be eligible for investment credit.

F. Disposition of Property.—Where property is disposed of prior to the life used in computing the investment credit, the tax for the year in which the property is so disposed of must be increased by the difference between the credit taken on such property and the credit which would have been allowed had the actual life been used. Such increase should be entered on the line provided on your tax return.

G. Limitations With Respect to Certain Persons.—In the case of (1) mutual savings banks, building and loan associations and cooperative banks, (2) a regulated investment company or a real estate investment trust subject to taxation under Subchapter M, and (3) a cooperative organization described in section 1381(a), the qualified investment and the $25,000 limitation shall equal such person's ratable share of such items in accordance with section 46(d)(2).

H. Carryback and Carryover of Unused Credits.—If the amount of the investment credit for any taxable year exceeds the limitation, the excess shall be an investment credit carryback to each of the 3 preceding taxable years and an investment credit carryover to each of the 5 succeeding taxable years and shall be added to the amount allowable as a credit for such years. However, such excess may be a carryback only to a taxable year ending after December 31, 1961.

I. Basis and Cost.—The credit for new property applies to the basis of the property. The credit for used property applies to the cost of the property. The cost (of used property) does not include the basis of any property traded in. No adjustment for additional first-year depreciation or salvage value is required.

SPECIFIC INSTRUCTIONS

Line 1. New Property.—Enter the basis of property as described in General Instructions C and I placed in service during the taxable year. In the case of property constructed, reconstructed or erected by you, enter only that portion of the basis which is properly attributable to construction, reconstruction or erection after December 31, 1961.

Used Property.—Enter the cost (subject to dollar limitation below) of used property placed in service during the taxable year.

Dollar Limitation on Used Property.—In general, the amount of used property taken into account may not exceed $50,000. In the case of a husband and wife filing separate returns, and each has used property taken into account on their returns, the amount may not exceed $25,000. In the case of a partnership, the $50,000 limitation shall apply with respect to the partnership and with respect to each partner. In the case of affiliated groups, the $50,000 limitation shall be reduced for each member of the group by apportioning $50,000 among the members of such group in accordance with their respective amounts of used property which may be taken into account.

Estates and Trusts.—In the case of an estate or trust the amount of the investment is apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

Line 6. Individuals and corporations filing forms other than Forms 1040 and 1120, use the tax figure shown on your return which is comparable to the figure to be used by a taxpayer using Form 1040 or 1120.

Line 9. Limitation Based on Amount of Tax.—In the case of a husband and wife filing separate returns and both have qualified investments, the amount specified on lines 9(a) and (b) shall be $12,500 instead of $25,000. In the case of affiliated groups, the $25,000 specified on lines 9(a) and (b) shall be reduced for each member of the group by apportioning the $25,000 among the members of such group. In the case of an estate or trust the $25,000 limitation specified on lines 9(a) and (b) shall be reduced to an amount which bears the same ratio to $25,000 as the amount of qualified investment allocated to the estate or trust bears to the entire qualified investment.

Exhibit B

Form 1120 — U.S. CORPORATION INCOME TAX RETURN—1965

U.S. Treasury Department, Internal Revenue Service

For calendar year 1965 or other tax year beginning July 1, 1965, ending June 30, 19 66

(PLEASE TYPE OR PRINT)

Check if a—
A. Sole proprietorship ☐ or Partnership ☐ (or other unincorporated business as a corporation.) ☐
B. Consolidated return. ☐
C. Personal Holding Co. ☐

D Business Code No. (see instr.) 5298

Name: 58-0136320 IVAN ALLEN COMPANY 1966 DO 58 6

Number: BOX 1712

City or town: ATLANTA GA 30301

5834715705104

E. Employer Identification No. 58-0136820

F. County in which located: Fulton

G. Enter total assets from line 13 Sch. L (see instruction Y): $ 4,166,439.82

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction Q.

GROSS INCOME	1. Gross receipts or gross sales ..... Less: Returns and allowances		7,715,373.16
	2. Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		5,465,114.67
	3. Gross profit		2,250,258.51
	4. Dividends (Schedule C)		60,457.48
	5. Interest on obligations of the United States and U.S. instrumentalities		
	6. Other interest		9,037.35
	7. Rents		155,964.15
	8. Royalties		
	9. Net gains (losses)—(separate Schedule D)		255,920.99
	10. Other income (attach schedule)		219,678.44
	11. TOTAL income—Add lines 3 through 10		2,951,316.91
DEDUCTIONS	12. Compensation of officers (Schedule E)		166,090.20
	13. Salaries and wages (not deducted elsewhere)		1,289,765.64
	14. Repairs (do not include cost of improvements or capital expenditures)		22,147.42
	15. Bad debts (Schedule F if reserve method is used)		13,980.92
	16. Rents		88,302.02
	17. Taxes (attach schedule)		125,483.64
	18. Interest		23,199.01
	19. Contributions (attach schedule—see instructions for limitation)		29,411.43
	20. Losses by fire, storm, shipwreck, other casualty, or theft (attach schedule)		
	21. Amortization (attach schedule)		
	22. Depreciation (Schedule G)		69,958.69
	23. Depletion (attach schedule)		
	24. Advertising		94,129.17
	25. (a) Pension, profit-sharing, stock bonus, annuity plans (see instructions)		70,000.00
	(b) Other employee benefit plans (see instructions)		
	26. Other deductions (attach schedule)		277,642.63
	27. TOTAL deductions in lines 12 through 26		2,270,415.86
	28. Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		680,901.05
	29. Less: (a) Net operating loss deduction (see instructions—attach schedule)		
	(b) Special deductions (Schedule I)	51,388.86	51,388.86
	30. Taxable income (line 28 less line 29)		629,512.19
TAX	31. TOTAL income tax (Schedule J) FORM 3920		235,004.97
	32. Credits: (a) Tax paid with Form 7004 application for extension (attach copy)		
	(b) Payments and credits on 1965 declaration of estimated tax	34,800.00	
	(c) Credit from regulated investment companies (attach Form 2439)		
	(d) Other (specify)		34,800.00
	33. If tax (line 31) is larger than credits (line 32), the balance is TAX DUE. Enter balance here ⟶		200,204.97
	34. If tax (line 31) is less than credits (line 32) ..... Enter the OVERPAYMENT here ⟶		
	35. Enter amount of line 34 you want: Credited on 1966 estimated tax ..... Refunded		

Under penalties of perjury I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

9-19-66 — Date

Signature of officer — President

GODFREY, LAWRENCE & MORTON

CERTIFIED PUBLIC ACCOUNTANTS

Date — Preparer's (Firm or name if individual) — Address

Form 1120 (1965) 10—70070-1

Form 1120 (1963) Page 3

Schedule A—COST OF GOODS SOLD (See instruction 2)

1. Inventory at beginning of year	498,560.19	5. Total of lines 1 through 4	6,051,055.29
2. Merchandise bought for manufacture or sale	4,227,733.91	6. Less: Inventory at end of year	585,940.62
3. Salaries and wages		7. Cost of goods sold (enter here and on line 2, page 1)	5,465,114.67
4. Other costs per books (attach schedule)	1,324,751.19		

Schedule C—INCOME FROM DIVIDENDS

1. Name of declaring corporation	2. Domestic corporations taxable under chapter 1, Internal Revenue Code	3. Certain preferred stock of public utilities taxable under chapter 1, Internal Revenue Code	4. Foreign corporations	5. Other corporations
Totals				
Total of columns 2, 3, 4, and 5 Schedule				60,457.48
Add amount includible by shareholder of controlled foreign corporation (attach Form 3646)				
Total (enter here and on line 4, page 1)				60,457.48

Schedule E—COMPENSATION OF OFFICERS (See page 5 of instructions)

1. Name, address, and social security number of officer	2. Title	3. Time devoted to business	Percent of corporation stock owned 4. Common	5. Preferred	6. Amount of compensation	7. Expense account allowances
Schedule						
Total compensation of officers (enter here and on line 12, page 1)					166,090.29	

Schedule F—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	4. Gross amount added to reserve	5. Amount charged against reserve	6. Reserve for bad debts at end of year
1960					
1961					
1962					
1963					
1964					
1965					

Schedule G—DEPRECIATION (See instruction 22)

Taxpayers using Revenue Procedure 62-21, in column 3 state the cost or other basis of assets held at end of year. Column 2 is not applicable to Revenue Procedure 62-21.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1. Total additional first year depreciation (do not include in items below)						2,000.00
Buildings						
Furniture and fixtures						
Transportation equipment						
Machinery and other equipment						
Other (specify)						
Schedule		1,933,700.03				86,540.02
2. Totals		1,933,700.03				88,540.02
3. Less: Amount of depreciation claimed in Schedule A and elsewhere on return						18,581.31
4. Balance—Enter here and on line 20, page 1						69,958.6

Schedule H—SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1. Total from Part II, line 20							
2. Other	43,711.13	42,823.89			2,000.00		88,540.02

COST OF GOODS MANUFACTURED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

	Quick-copy	Printing
Inventory - materials, June 30, 1965	$ 5,498.10	$ 65,155.96
Purchases - materials	84,237.23	594,159.68
Freight	12.79	2,605.70
	$ 89,748.12	$ 661,921.34
Less inventory - materials, June 30, 1966	3,946.35	70,194.06
MATERIALS USED	$ 85,801.77	$ 591,727.28
Direct labor	$ 60,566.89	$ 334,288.46
Manufacturing expenses:		
Labor - indirect	$ -	$ 69,809.53
Payroll taxes	1,800.00	9,600.00
Rent - building	-	19,800.00
- equipment	1,790.42	797.25
Heat, power and water	-	13,075.18
Depreciation, equipment	1,253.42	17,327.91
Insurance	-	5,933.68
Taxes, general	-	2,512.02
Maintenance, equipment	3,675.43	16,365.99
Supplies - departmental	5,371.58	3,259.94
- litho	-	3,757.05
- letterpress	-	3,419.26
- composition	2,782.82	5,169.51
- cutting machine	5.68	860.72
- bindery "B"	-	1,517.84
- plate making	9,237.25	7,336.26
- collator	-	3,070.04
- rotary press	-	1,486.66
- camera	-	5,182.57
Outside services	4,183.62	25,650.58
Other	4,429.71	1,914.87
TOTAL MANUFACTURING EXPENSE	$ 34,529.93	$ 217,846.86
TOTAL COST OF GOODS MANUFACTURED	$180,898.59	$1,143,862.60

STATEMENT OF PROPERTY, PLANT AND EQUIPMENT

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

	Assets				Allowance for depreciation				Cost less depreciation
	Balance Jun. 30, 1965	Additions	Disposals	Balance Jun. 30, 1966	Balance Jun. 30, 1965	Provision	Disposals	Balance Jun. 30, 1966	Jun. 30, 1966
Rental property:									
Land:									
972 Marietta St.	$ 35,250.00	$ -	$ -	$ 35,250.00	$ -	$ -	$ -	$ -	$ 35,250.00
1740 Peachtree St.	120,000.00	-	-	120,000.00	-	-	-	-	120,000.00
221 Ivy St.	150,000.00	-	-	150,000.00	-	-	-	-	150,000.00
660 Forrest Road	72,000.00	-	-	72,000.00	-	-	-	-	72,000.00
Parking lot	-	56,375.00	-	56,375.00	-	-	-	-	56,375.00
Buildings:									
972 Marietta St.:									
1948 - 3%	81,997.69	-	-	81,997.69	42,228.78	2,459.93	-	44,688.71	37,308.98
Improvements:									
Sprinkler - 1948 - 5%	9,937.00	-	-	9,937.00	7,933.01	496.85	-	8,429.86	1,507.14
Roof - 1955	4,097.84	-	-	4,097.84	4,097.84	-	-	4,097.84	-
1740 Peachtree St.:									
1959 - 5% - (A)	183,078.48	-	-	183,078.48	51,863.46	6,560.75	-	58,424.21	124,654.27
Improvements - 1959 - (A):									
Elevator 10%	15,500.00	-	-	15,500.00	7,674.52	782.55	-	8,457.07	7,042.93
Blacktop - 13.3%	6,900.00	-	-	6,900.00	4,166.71	363.53	-	4,530.24	2,369.76
Electrical - 13.3%	31,000.00	-	-	31,000.00	18,715.82	1,633.80	-	20,349.62	10,650.38
Plumbing, heating and air-conditioning - 13.3%	63,000.00	-	-	63,000.00	37,948.67	3,331.83	-	41,280.50	21,719.50
Carpets, etc. - 20%	9,000.00	-	-	9,000.00	6,876.63	424.67	-	7,301.30	1,698.70
221 Ivy St.:									
1960 - 4%	101,012.25	-	-	101,012.25	22,521.37	4,040.49	-	26,561.86	74,450.39
1963 addition - 4%	444,765.14	-	-	444,765.14	44,704.87	17,790.60	-	62,495.47	382,269.67
1963 roof - 5%	8,156.00	-	-	8,156.00	815.60	407.80	-	1,223.40	6,932.60
1963 waterproofing and sign - 20%	9,190.54	-	-	9,190.54	3,941.77	1,838.11	-	5,779.88	3,410.66
660 Forrest Road:									
1964 - 5% - (A)	124,558.94	-	-	124,558.94	6,227.95	5,916.55	-	12,144.50	112,414.44
	$1,469,443.88	$ 56,375.00	$ -	$1,525,818.88	$259,717.00	$46,047.46	$ -	$305,764.46	$1,220,054.42
Furniture and fixtures:									
Store - 1961-2 25% (A)	$ 249.24	$ -	$ (18.76)(C)	268.00	$ 155.40	$ 28.15	$ -	$ 183.55	$ 84.45
- 1962-3 25% (A)	161.41	-	(12.14)(C)	173.55	81.97	22.90	-	104.87	68.68
Plant - 1958 - 20% (A)	3,562.74	-	-	3,562.74	2,890.29	134.49	-	3,024.78	537.96
Office - 1956 - 20% (A)	4,736.12	-	-	4,736.12	4,164.01	114.42	-	4,278.43	457.69
- 1957 - 20% (A)	388.88	-	-	388.88	329.63	11.85	-	341.48	47.40
- 1959 - 20% (A)	2,790.79	-	30.90(C)	2,759.89	2,264.49	99.08	-	2,363.57	396.32
- 1961 - 20% (A)	3,675.00	-	-	3,675.00	2,320.25	270.95	-	2,591.20	1,083.80
- 1962 - 25% (A)	1,673.01	-	-	1,673.01	1,043.10	157.48	-	1,200.58	472.43
- 1964 - 25% (A)	3,960.00	-	-	3,960.00	1,361.25	649.69	-	2,010.94	1,949.06
- 1965 - 25% (A)	7,439.50	-	-	7,439.50	2,083.06	1,339.11	-	3,422.17	4,017.33
- 1966 - 25% (B)	-	29,107.80	-	29,107.80	-	5,388.47	-	5,388.47	23,719.33
	$ 28,636.69	$ 29,107.80	$ -	$ 57,744.49	$ 16,693.45	$ 8,216.59	$ -	$ 24,910.04	$ 32,834.45

STATEMENT OF PROPERTY, PLANT AND EQUIPMENT - CONTINUED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

	Assets				Allowance for depreciation				Cost less depreciation
	Balance Jun. 30, 1965	Additions	Disposals	Balance Jun. 30, 1966	Balance Jun. 30,1965	Provision	Disposals	Balance Jun. 30,1966	Jun. 30, 1966
Automobiles and trucks:									
Salesmen:									
1961 Falcon	$ 1,606.78	$ -	$ 1,606.78	$ -	$ 1,562.13	$ -	$ 1,562.13	$ -	$ -
1962 Chevrolet	3,471.22	-	3,471.22	-	3,214.34	-	3,214.34	-	-
1964 Oldsmobile	3,114.68	-	3,114.68	-	2,076.44	-	2,076.44	-	-
1964 Chevrolet - 33 1/3%	2,999.11	-	-	2,999.11	1,497.88	999.70	-	2,497.58	501.53
1965 Cadillac	6,581.09	-	6,581.09	-	2,193.70	-	2,193.70	-	-
1965 Falcon - 33 1/3%	-	2,087.53	-	2,087.53	-	695.84	-	695.84	1,391.69
1966 Chevrolet - 33 1/3%	-	3,303.65	-	3,303.65	-	550.61	-	550.61	2,753.04
1966 Mustang - 33 1/3%	-	1,516.88	-	1,516.88	-	252.81	-	252.81	1,264.07
1966 Chevrolet - 33 1/3%	-	4,387.39	-	4,387.39	-	1,462.46	-	1,462.46	2,924.93
1966 Buick - 33 1/3%	-	4,378.70	-	4,378.70	-	729.80	-	729.80	3,648.90
1966 Cadillac - 33 1/3%	-	6,292.39	-	6,292.39	-	1,048.73	-	1,048.73	5,243.66
1966 Galaxie - 33 1/3%	-	3,486.44	-	3,486.44	-	581.08	-	581.08	2,905.36
Furniture department:									
1960 G.M.C. truck	3,783.11	-	3,783.11	-	3,694.44	-	3,694.44		-
1963 Chevrolet stake - 66 2/3% (A)	1,917.35	-	-	1,917.35	1,633.39	189.30	-	1,822.69	94.66
1964 G.M.C. truck	5,815.29	-	5,815.29	-	3,876.46	-	3,876.46	-	-
1965 Dodge van - 33 1/3%	1,962.10	-	-	1,962.10	654.03	654.03	-	1,308.06	654.04
1966 Dodge van - 33 1/3%	-	2,295.69	-	2,295.69	-	382.62	-	382.62	1,913.07
1966 Dodge truck - 33 1/3%	-	6,016.70	-	6,016.70	-	1,002.78	-	1,002.78	5,013.92
Wrens Hyster - 33 1/3%	-	5,064.55	-	5,064.55	-	844.10	-	844.10	4,220.45
1966 Dodge van - 33 1/3%	-	3,501.70	-	3,501.70	-	583.61	-	583.61	2,918.09
Printing department:									
1962 Chevrolet panel - 66 2/3% (A)	2,230.61	-	-	2,230.61	2,065.51	110.07	-	2,175.58	55.03
1964 Chevrolet S. W. - 33 1/3%	2,457.03	-	-	2,457.03	1,258.48	819.01	-	2,077.49	379.54
Store delivery:									
1962 Ford van	1,476.20	-	1,476.20	-	1,435.19	-	1,435.19	-	-
1962 Ford van 66 2/3% (A)	1,433.31	-	-	1,433.31	1,393.37	26.63	-	1,420.00	13.31
1962 Chevrolet stake	1,772.89	-	1,772.89	-	1,641.55	-	1,641.55	-	-
1962 Chevrolet panel	1,682.13	-	1,682.13	-	1,557.55	-	1,557.55	-	-
1963 Ford van - 66 2/3% (A)	2,012.38	-	-	2,012.38	1,863.63	99.17	-	1,962.80	49.58
1964 Chevrolet panel - 33 1/3%	1,868.96	-	-	1,868.96	934.55	622.98	-	1,557.53	311.43
1964 Ford van - 33 1/3%	2,054.75	-	-	2,054.75	342.45	684.92	-	1,027.37	1,027.38
1965 Chevrolet panel - 33 1/3%	2,358.31	-	-	2,358.31	373.05	786.10	-	1,159.15	1,199.16
1965 Chevrolet panel - 33 1/3%	2,168.93	-	-	2,168.93	361.50	722.97	-	1,084.47	1,084.46
1965 Chevrolet panel - 33 1/3%	1,836.34	-	-	1,836.34	306.06	612.12	-	918.18	918.16
1965 Chevrolet panel - 33 1/3%	-	2,028.29	-	2,028.29	-	338.05	-	338.05	1,690.24
1965 Chevrolet panel - 33 1/3%	-	1,889.55	-	1,889.55	-	314.93	-	314.93	1,574.62
1966 Chevrolet truck - 33 1/3%	-	3,481.35	-	3,481.35	-	580.22	-	580.22	2,901.13
Quick-Copy department:									
1965 Ford - 33 1/3%	1,392.00	-	-	1,392.00	232.00	464.00	-	696.00	696.00
	$ 55,994.57	$ 49,730.51	$29,303.39	$ 76,421.99	$ 34,167.70	$16,158.64	$21,251.80	$ 29,074.54	$ 47,347.45

STATEMENT OF PROPERTY, PLANT AND EQUIPMENT - CONCLUDED

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

	Assets				Allowance for depreciation				Cost less depreciation
	Balance Jun. 30, 1965	Additions	Disposals	Balance Jun. 30, 1966	Balance Jun. 30, 1965	Additions	Disposals	Balance Jun. 30, 1966	Jun. 30, 1966
Machinery and equipment:									
Printing plant:									
6 1/4%:									
1947	$ 11,899.60	$ -	$ -	$ 11,899.60	$ 11,699.60	$ -	$ -	$ 11,699.60	$ 200.00
1947	29,000.00	-	-	29,000.00	28,500.00	-	-	28,500.00	500.00
1950	455.00	-	455.00	-	440.82	14.18	455.00	-	-
1951	12,875.20	-	-	12,875.20	11,668.15	804.70	-	12,472.85	402.35
20% (A):									
1954	42,135.00	-	-	42,135.00	38,696.59	687.68	-	39,384.27	2,750.73
1956	16,600.00	-	-	16,600.00	14,594.70	401.06	-	14,995.76	1,604.24
1957	3,858.00	-	-	3,858.00	3,275.46	116.50	-	3,391.96	466.04
1958	26,527.99	-	-	26,527.99	21,520.99	1,001.40	-	22,522.39	4,005.60
1961	10,225.00	-	-	10,225.00	5,513.32	942.34	-	6,455.66	3,769.34
1963	42,388.65	-	-	42,388.65	17,014.98	5,074.73	-	22,089.71	20,298.94
1964	38,414.50	-	-	38,414.50	12,196.06	5,243.69	-	17,439.75	20,974.75
1965	9,012.50	-	-	9,012.50	1,362.14	1,530.07	-	2,892.21	6,120.29
1966	-	13,865.55	-	13,865.55	-	1,386.56	-	1,386.56	12,479.99
12 1/2% - 1966	-	2,000.00	-	2,000.00	-	125.00	-	125.00	1,875.00
Quick-Copy department:									
20% (A):									
1956	2,687.18	-	-	2,687.18	2,281.43	81.15	-	2,362.58	324.60
1956	3,173.42	-	-	3,173.42	2,790.07	76.67	-	2,866.74	306.68
1957	1,372.00	-	-	1,372.00	1,164.83	41.43	-	1,206.26	165.74
1958	2,856.74	-	-	2,856.74	2,317.54	107.84	-	2,425.38	431.36
1966	-	4,823.34	-	4,823.34	-	482.33	-	482.33	4,341.01
	$ 253,480.78	$ 20,688.89	$ 455.00	$ 273,714.67	$175,036.68	$18,117.33	$ 455.00	$192,699.01	$ 81,015.66
	$1,807,555.92	$155,902.50	$29,758.39	$1,933,700.03	$485,614.83	$88,540.02	$21,706.80	$552,448.05	$1,381,251.98

(A) - Declining balance method

(B) - Additional first year depreciation taken on first $10,000.00

(C) - Reclassifications

STATEMENT OF RETAINED EARNINGS

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

Retained earnings, June 30, 1965			$2,200,184.77
Add:			
Net income for the year ended June 30, 1966		$450,501.83	
Excess of fair market value over cost of securities donated to Allen Foundation, Inc. as of 6-10-66:			
Fair market value:			
149 shares 3 M Corp.	$11,230.98		
165 shares Southern Airways	2,805.00		
50 shares Xerox Corp.	12,500.00		
	$26,535.98		
Cost, prior to 1960:			
149 shares 3 M Corp.	$ 3,045.82		
165 shares Southern Airways	600.00		
50 shares Xerox Corp.	240.00		
	$ 3,885.82	22,650.16	473,151.99
			$2,673,336.76
Deduct:			
Political contribution		$ 100.00	
10% stock dividend		262,822.75	
Cash dividend		50,267.49	313,190.24
RETAINED EARNINGS - JUNE 30, 1966			$2,360,146.52

Treasury Department — Internal Revenue Service

Form **2220**

STATEMENT RELATING TO UNDERPAYMENT OF ESTIMATED INCOME TAX BY CORPORATIONS

(To be filed with your income tax return)

1965

Name of Corporation: IVAN ALLEN COMPANY

Employer Identification No.: 58-0136820

Address (Number, street, city, State, and Postal ZIP code): BOX 1712 ATLANTA, GEORGIA 30301

Computation of Underpayments (See instructions on reverse side)

By filling in lines 1 through 4 below you can determine whether by each of four installment dates the corporation paid at least 4%, 4%, 25% and 25%, respectively, of 70% of the tax liability shown on its return (less the sum of any personal holding company tax and $100,000). If so it will not be necessary to file this form.

1. (a) Tax (line 31, page 1, Form 1120)			$ 235,004.95
(b) Tax under section 541 of the Internal Revenue Code (from Schedule 1120 PH) included in line 1(a)	$		
(c) Statutory exemption		100,000	$ 100,000.00
(d) Balance (line 1(a) less sum of lines 1(b) and 1(c))			$ 135,004.95
(e) 70 percent of line 1(d)			$ 94,503.46

	Due Dates of Installments			
	(a) 10-15-65	(b) 12-15-65	(c) 3-15-66	(d) 6-15-66
2. Enter 4% of line 1(e) in columns (a) and (b), and 25% of line 1(e) in columns (c) and (d)	$ 3,780.13	$ 3,780.13	$ 23,625.86	$ 23,625.86
3. (a) Amount paid for each period	-	3,200.00	15,800.00	15,800.00
(b) Overpayment of previous installment [1]	XXXXXXX			
(c) Total of lines 3 (a) and (b)	-	3,200.00	15,800.00	15,800.00
4. Underpayment (or overpayment) (line 2 less line 3(c))	$ 3,780.13	$ 580.13	$ 7,825.86	$ 7,825.86

[1] An overpayment of an installment on line 4 in excess of all prior underpayments should be applied as a credit against the next installment.

There is no additional charge imposed on an underpayment shown on line 4 for any installment date if by that date the corporation made the minimum payment determined under any of the following exceptions.

Exception 1.—An amount equal to the tax shown on the return filed for the preceding taxable year reduced by $100,000. The preceding year's return must cover a period of 12 months and must show a tax liability.

Exception 2.—An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the corporation's return for, and the law applicable to, the preceding taxable year.

Exception 3.—An amount equal to 70 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income—(1) for the first 3 months of the taxable year, in the case of the installment required to be paid in the 4th month, (2) for the first 3 months or for the first 5 months of the taxable year (whichever results in no additional charge), in the case of the installment required to be paid in the 6th month, (3) for the first 6 months or for the first 8 months of the taxable year (whichever results in no additional charge), in the case of the installment required to be paid in the 9th month, and (4) for the first 9 months or for the first 11 months of the taxable year (whichever results in no additional charge), in the case of the installment required to be paid in the 12th month of the taxable year.

The taxable income shall be placed on an annualized basis by first multiplying the taxable income for the period by 12, and then dividing the resulting amount by the number of months in the period (3, 5, 6, 8, 9, or 11, as the case may be).

For the purpose of Exceptions 2 and 3 above, the term "tax" means the excess of the tax imposed by section 11, 1201(a), or subchapter L of chapter 1, whichever is applicable, over the sum of $100,000 and any credits against tax.

Check below which exception, if any, applies for each underpaid installment. **(Attach schedule showing computation.)**

EXCEPTION 1		EXCEPTION 2		EXCEPTION 3	
Apr. 15 ☐	June 15 ☐	Apr. 15 ☐	June 15 ☐	Apr. 15 ☒	June 15 ☒
Sept. 15 ☐	Dec. 15 ☐	Sept. 15 ☐	Dec. 15 ☐	Sept. 15 ☒	Dec. 15 ☒

Computation of Additional Charge

If an underpayment of estimated tax is shown on line 4, above, for an installment and an exception is not applicable, the additional charge should be computed by completing the portion(s) of this schedule applicable to the installment(s).

	Due Dates of Installments			
	Apr. 15	June 15	Sept. 15	Dec. 15
5. Amount of underpayment (from line 4, above)	$	$	$	$
6. Date of payment or March 15, 1965, whichever is earlier [1]				
7. Number of days from due date of installment to the date shown in line 6, above				
8. Additional charge (6 percent per year on the amount on line 5 for the number of days shown on line 7)	$	$	$	$
9. Total of amounts on line 8. (On page 1, Form 1120, show this amount in the bottom margin as "additional charge" and increase line 33 or decrease line 34 accordingly)				$

[1] A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment as computed on line 2. If the corporation made more than one payment for a given installment attach schedule showing separate computation for each payment.

TAX SCHEDULE

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

COMPUTATION - EXCEPTION 3 - FORM 2220 - FEDERAL

	10-15-65	12-15-65	3-15-66	6-15-66
Income - 3 months	$ 55,315			
- 5 months		$169,720		
- 6 months			$208,592(A)	
- 8 months			310,978	
- 11 months				$394,946
Income annualized	$221,260	$407,328	$417,184(A)	$427,867
Dividends received credit	7,353	18,019	27,253	51,388
TAXABLE INCOME	$213,907	$389,309	$389,931	$376,479
Tax (1562 corp.)	$ 97,675	$181,868	$182,167	$175,705
Less investment credit	-	-	3,486	3,486
	$ 97,675	$181,868	$178,681	$172,219
Less $100,000	100,000	100,000	100,000	100,000
	$ -	$ 81,868	$ 78,681	$ 72,219
70%	$ -	$ 57,308	$ 55,077	$ 50,553
5.333%		$ 3,056		
26.333%			$ 14,504	$ 13,312
Payments		$ 3,200	$ 15,800	$ 15,800
Carryover		-	144	1,440
		$ 3,200	$ 15,944	$ 17,240
(Excess) payments		$ (144)	$ (1,440)	$ (3,928)

FORM 3920

U.S. Treasury Department - Internal Revenue Service

TAX COMPUTATION SCHEDULE FOR COMPONENT MEMBERS OF CONTROLLED CORPORATE GROUP—1965

or other taxable year beginning July 1, 1965, ending June 30, 19 66

(PLEASE TYPE OR PRINT)

Attach to Your Tax Return

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

PART I—TAX COMPUTATION

1. (a) Taxable Income (Form 1120, page 1, line 30; Form 1120-F, page 3, line 30; Form 1120-L, page 1, line 4; Form 990-T, page 2, line 31)	629,512.19
(b) Surtax exemption ($25,000, amount apportioned under section 1561, or line 1(a), whichever is lesser)	
(c) Balance (line 1(a) less line 1(b))	
2. (a) 22 percent of line 1(a)	
(b) 26 percent of line 1(c)	
(c) If multiple surtax exemption is elected under section 1562, enter 6 percent of line 1(b)	
3. Income tax (line 2, or line 10 of alternative tax computation, whichever is lesser)	238,490.72
4. Foreign tax credit (attach Form 1118)	
5. Balance (line 3 less line 4)	238,490.72
6. Investment credit (attach Form 3468)	3,485.77
7. Balance of income tax (line 5 less line 6)	235,004.95
8. Tax under section 541 of the Internal Revenue Code (from Schedule 1120 PH)	
9. Tax from recomputing prior year investment credit (attach statement)	
10. Total tax—Add lines 7, 8, and 9. Enter here and on (Form 1120, page 1, line 31; Form 1120-F, page 1, line 1; Form 1120-L, page 1, line 12; Form 990-T, page 1, line 15)	235,004.95

PART II—ALTERNATIVE TAX COMPUTATION

1. Taxable income (line 1(a), Part I)	629,512.19
2. Net long-term capital gain reduced by any net short-term capital loss	255,109.22
3. Line 1 less line 2	374,402.97
4. Surtax exemption ($25,000, amount apportioned under section 1561, or line 3, whichever is lesser)	25,000.00
5. Line 3 less line 4	349,402.97
6. 25 percent of line 2	63,777.30
7. 22 percent of line 3	82,368.65
8. 26 percent of line 5	90,844.77

INSTRUCTIONS

Taxpayers Required To File Form 3920.—Component members of a controlled group of corporations (1) filing a consolidated return, (2) apportioning a single $25,000 surtax exemption under section 1561, (3) electing to claim multiple surtax exemptions under section 1562, or (4) otherwise coming within the provisions of section 1561 or 1562, must file Form 3920 with their income tax return. Form 3920 shall be used to compute the tax in lieu of the tax computation schedule on Form 1120, Form 1120-F, Form 1120-L, and Form 990-T.

Surtax Exemption for Component Members of a Controlled Group of Corporations.—Under section 1561, if a corporation is a component member of a controlled group of corporations on December 31 of its taxable year, the surtax exemption shall be—

(1) $25,000 divided by the number of component members on such December 31, or

(2) If all members consent to an apportionment plan, their portion of $25,000 determined in accordance with the plan. The sum of the amounts so apportioned shall not exceed $25,000. See section 1561 and the regulations thereunder for time and manner of making the consent.

The surtax exemption for a component member which has a short taxable year which does not include a December 31 shall be $25,000 divided by the number of component members in the group on the last day of such taxable year.

If the surtax exemption is determined under (1) or (2) above, the additional 6-percent tax under section 1562 does not apply.

Election of Multiple Surtax Exemptions by a Controlled Group of Corporations.—Subject to the provisions of section 1562, a controlled group of corporations may elect, with respect to a specified December 31, to have each of its component members claim a separate $25,000 surtax exemption without having to divide equally or apportion one $25,000 surtax exemption among all component members. Such election is valid only if each component member of the group on such December 31 and each other component member of the group on any succeeding December 31 before the day on which the election is made, consents to such election. See section 1562 and the regulations thereunder for provisions relating to such consent. An election, once made, continues in effect until terminated in the manner provided in section 1562(c). If the group elects to claim multiple surtax exemptions, each component member must pay an additional tax of 6 percent on its first $25,000 taxable income. If you are the only component member of the controlled group which has taxable income or if your surtax exemption has been disallowed, see section 1562(b)(1).

U.S. GOVERNMENT PRINTING OFFICE: 1965—O-772-168

Controlled Group of Corporations.—In general, the term "controlled group of corporations" means any group of—

(1) Parent-subsidiary controlled group.—One or more chains of corporations connected through stock ownership with a common parent corporation if at least 80 percent of the voting power or at least 80 percent of the value of all stock of each of the corporations (except the common parent corporation) is owned by one or more of the other corporations; and if the common parent corporation owns at least 80 percent of the voting power or at least 80 percent of the value of all stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group.—Two or more corporations if at least 80 percent of the voting power or at least 80 percent of the value of all stock of each of the corporations is owned by one person who is an individual, estate, or trust.

(3) Combined group.—Three or more corporations each of which is a member of a group of corporations described in (1) or (2) above, and one of which is a common parent corporation included in a group of corporations described in (1) above, and also is included in a group of corporations described in (2) above.

(4) Certain insurance companies.—Two or more insurance companies subject to taxation under section 802 which are members of a controlled group of corporations described in (1), (2), or (3) above. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group described in (1), (2), or (3) above.

For the definition of the term "stock" and for rules relating to the determination of stock ownership, see sections 1563(c) and (d).

Component Members.—In general, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year if the corporation is (1) a member of the controlled group on the December 31 included in such year and is not treated as an excluded member under section 1563(b)(2) and the regulations thereunder, or (2) is not a member of the controlled group on the December 31 but is treated as an additional member under section 1563(b)(3) and the regulations thereunder.

Alternative Tax.—If the net long-term capital gain exceeds the net short-term capital loss, or if there is only a long-term capital gain, the alternative tax should be computed to determine if it produces a lesser tax.

630—1:—78658-1

FORM 3920

U.S. Treasury Department - Internal Revenue Service

TAX COMPUTATION SCHEDULE FOR COMPONENT MEMBERS OF CONTROLLED CORPORATE GROUP—1965

or other taxable year beginning July 1, 1965, ending June 30, 19 66

(PLEASE TYPE OR PRINT)

Attach to Your Tax Return

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

PART I—TAX COMPUTATION

1. (a) Taxable Income (Form 1120, page 1, line 30; Form 1120-F, page 3, line 30; Form 1120-L, page 1, line 4; Form 990-T, page 2, line 31)		629,512.19
(b) Surtax exemption ($25,000, amount apportioned under section 1561, or line 1(a), whichever is lesser)		
(c) Balance (line 1(a) less line 1(b))		
2. (a) 22 percent of line 1(a)		
(b) 26 percent of line 1(c)		
(c) If multiple surtax exemption is elected under section 1562, enter 6 percent of line 1(b)		
3. Income tax (line 2, or line 10 of alternative tax computation, whichever is lesser)		238,490.72
4. Foreign tax credit (attach Form 1118)		
5. Balance (line 3 less line 4)		238,490.72
6. Investment credit (attach Form 3468)		3,485.77
7. Balance of income tax (line 5 less line 6)		235,004.95
8. Tax under section 541 of the Internal Revenue Code (from Schedule 1120 PH)		
9. Tax from recomputing prior year investment credit (attach statement)		
10. Total tax—Add lines 7, 8, and 9. Enter here and on (Form 1120, page 1, line 31; Form 1120-F, page 1, line 1; Form 1120-L, page 1, line 12; Form 990-T, page 1, line 15)		235,004.95

PART II—ALTERNATIVE TAX COMPUTATION

1. Taxable income (line 1(a), Part I)	629,512.19
2. Net long-term capital gain reduced by any net short-term capital loss	255,109.22
3. Line 1 less line 2	374,402.97
4. Surtax exemption ($25,000, amount apportioned under section 1561, or line 3, whichever is lesser)	25,000.00
5. Line 3 less line 4	349,402.97
6. 25 percent of line 2	63,777.30
7. 22 percent of line 3	82,368.65
8. 26 percent of line 5	90,844.77
9. If multiple surtax exemption is elected under section 1562 enter 6 percent of line 4	1,500.00
10. Total of lines 6 through 9. If applicable, enter here and on line 3, Part I, and write "alt." in the margin to the right of the entry	238,490.72

e39—10—78568-1

INSTRUCTIONS

Taxpayers Required To File Form 3920.—Component members of a controlled group of corporations (1) filing a consolidated return, (2) apportioning a single $25,000 surtax exemption under section 1561, (3) electing to claim multiple surtax exemptions under section 1562, or (4) otherwise coming within the provisions of section 1561 or 1562, must file Form 3920 with their income tax return. Form 3920 shall be used to compute the tax in lieu of the tax computation schedule on Form 1120, Form 1120-F, Form 1120-L, and Form 990-T.

Surtax Exemption for Component Members of a Controlled Group of Corporations.—Under section 1561, if a corporation is a component member of a controlled group of corporations on December 31 of its taxable year, the surtax exemption shall be—

(1) $25,000 divided by the number of component members on such December 31, or

(2) If all members consent to an apportionment plan, their portion of $25,000 determined in accordance with the plan. The sum of the amounts so apportioned shall not exceed $25,000. See section 1561 and the regulations thereunder for time and manner of making the consent.

The surtax exemption for a component member which has a short taxable year which does not include a December 31 shall be $25,000 divided by the number of component members in the group on the last day of such taxable year.

If the surtax exemption is determined under (1) or (2) above, the additional 6-percent tax under section 1562 does not apply.

Election of Multiple Surtax Exemptions by a Controlled Group of Corporations.—Subject to the provisions of section 1562, a controlled group of corporations may elect, with respect to a specified December 31, to have each of its component members claim a separate $25,000 surtax exemption without having to divide equally or apportion one $25,000 surtax exemption among all component members. Such election is valid only if each component member of the group on such December 31 and each other component member of the group on any succeeding December 31 before the day on which the election is made, consents to such election. See section 1562 and the regulations thereunder for provisions relating to such consent. An election, once made, continues in effect until terminated in the manner provided in section 1562(c). If the group elects to claim multiple surtax exemptions, each component member must pay an additional tax of 6 percent on its first $25,000 taxable income. If you are the only component member of the controlled group which has taxable income or if your surtax exemption has been disallowed, see section 1562(b)(1).

U.S. GOVERNMENT PRINTING OFFICE: 1965—O-772-168

Controlled Group of Corporations.—In general, the term "controlled group of corporations" means any group of—

(1) Parent-subsidiary controlled group.—One or more chains of corporations connected through stock ownership with a common parent corporation if at least 80 percent of the voting power or at least 80 percent of the value of all stock of each of the corporations (except the common parent corporation) is owned by one or more of the other corporations; and if the common parent corporation owns at least 80 percent of the voting power or at least 80 percent of the value of all stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group.—Two or more corporations if at least 80 percent of the voting power or at least 80 percent of the value of all stock of each of the corporations is owned by one person who is an individual, estate, or trust.

(3) Combined group.—Three or more corporations each of which is a member of a group of corporations described in (1) or (2) above, and one of which is a common parent corporation included in a group of corporations described in (1) above, and also is included in a group of corporations described in (2) above.

(4) Certain insurance companies.—Two or more insurance companies subject to taxation under section 802 which are members of a controlled group of corporations described in (1), (2), or (3) above. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group described in (1), (2), or (3) above.

For the definition of the term "stock" and for rules relating to the determination of stock ownership, see sections 1563(c) and (d).

Component Members.—In general, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year if the corporation is (1) a member of the controlled group on the December 31 included in such year and is not treated as an excluded member under section 1563(b)(2) and the regulations thereunder, or (2) is not a member of the controlled group on the December 31 but is treated as an additional member under section 1563(b)(3) and the regulations thereunder.

Alternative Tax.—If the net long-term capital gain exceeds the net short-term capital loss, or if there is only a long-term capital gain, the alternative tax should be computed to determine if it produces a lesser tax.

e39—10—78568-1

FORM 3468
U.S. Treasury Department
Internal Revenue Service

COMPUTATION OF INVESTMENT CREDIT—1965

or taxable year beginning July 1, 1965, ending June 30, 19 66

TO BE ATTACHED TO YOUR TAX RETURN

Name (as shown on page 1 of your tax return)
IVAN ALLEN COMPANY

Address (number and street)
BOX 1712

City or town, and State
ATLANTA, GEORGIA 30301

1. Qualified investment in new or used property

NOTE: Include your share of investment in property by a partnership, estate, trust, small business corporation, or lessor.

Type of property	Line	(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) Qualified investment (column 2 x column 3)
NEW PROPERTY	(a)	4 or more but less than 6		33⅓	
	(b)	6 or more but less than 8		66⅔	
	(c)	8 or more	47,796.69	100	47,796.69
USED PROPERTY (for dollar limitation see instructions)	(d)	4 or more but less than 6		33⅓	
	(e)	6 or more but less than 8		66⅔	
	(f)	8 or more	2,000.00	100	2,000.00

2. Total qualified investment—add lines 1(a) through (f)	49,796.69
3. Tentative investment credit—7% of line 2 (for public utility property, enter 3% of line 2)	3,485.77
4. Carryback and carryover of unused credit(s) (attach statement)	
5. TOTAL (line 3 plus line 4)	3,485.77

COMPUTATION OF TAX FOR PURPOSES OF LIMITATION

6. (a) Individuals (enter amount from line 12, page 1, Form 1040)	238,490.72
(b) Estates and trusts (enter amount from line 25 or 26, page 1, Form 1041)	
(c) Corporations (enter amount from line 5, Tax Computation Schedule, Form 1120)	
7. Individuals, estates and trusts:	
Less: (a) Foreign tax credit	
(b) Dividends received credit	
(c) Retirement income credit	
(d) Total (add lines (a), (b), and (c))	
8. Balance (line 6 less line 7(d))	238,490.72

LIMITATION BASED ON AMOUNT OF TAX

(Married persons filing separately, affiliated groups, estates and trusts—see instructions)

9. (a) Enter amount on line 8 or $25,000, whichever is lesser	25,000.00
(b) If line 8 is in excess of $25,000, enter 25% of the excess	53,372.68
(c) Total (add lines (a) and (b))	78,372.68
10. Investment credit (enter amount on line 5 or 9(c), whichever is lesser)	3,485.77

SCHEDULE A

If any part of your investment in 1 above was made by a partnership, estate, trust, small business corporation, or lessor complete the following:

Name (Partnership, estate, trust, etc.)	Address	Property		
		New	Used	Life years
		$	$	

16—78812-1

GENERAL INSTRUCTIONS

A. Who Must File.—Any individual, estate, trust, or corporation claiming an investment credit against its tax must attach this form to its income tax return. Partnerships and small business corporations are not required to file this form because the credit is claimed by the partner or shareholder. However, partnerships and small business corporations must attach a statement to their returns showing the allocation of investment to the partners or shareholders by amount, type and life of property as shown in item 1 of this form. Estates and trusts which apportion the investment between the estate or trust and the beneficiaries should in addition to filing this form attach a statement showing the allocation of the investment among the beneficiaries.

B. When Allowed.—A credit is allowed against your tax for investment in certain depreciable property having an estimated useful life of 4 years or more. The credit is allowed for the first year property is placed in service, even though under the depreciation convention used you may not be able to claim a deduction for depreciation on the property until the following year.

C. Property Defined.—The investment credit is applicable to (a) tangible personal property, (b) real property (except for buildings and their structural components) if used as an integral part of manufacturing, production or extraction, or used as a research or storage facility in connection with these activities, and (c) elevators and escalators, if their construction, reconstruction, or erection is completed by the taxpayer after June 30, 1963, or if they are acquired after June 30, 1963, and their original use commences with the taxpayer and commences after such date.

The investment credit is not applicable to (1) certain property which is used predominantly outside the United States (2) property used for lodging or in connection with furnishing lodging, except (a) property used in certain commercial facilities located therein (such as a restaurant) or (b) property used by a hotel or motel. (3) property used by a tax-exempt organization (other than in a business to which the unrelated business income tax applies). (4) property used by governmental units; (5) livestock (including racehorses).

D. Election for Leased Property.—A lessor may elect to treat an investment in new property as if made by the lessee instead of the lessor. If the lessor makes this election, then the lessee is treated as if he had acquired the property (see section 48(d) for determination of basis).

Where a lessor makes an election with respect to leased property, such election must be made in accordance with section 48(d) and the regulations thereunder.

E. Replacement Property.—Where insured property is lost or destroyed as a result of a casualty or is stolen, reinvestment of the insurance proceeds in replacement property may not be eligible for investment credit.

F. Disposition of Property.—Where property is disposed of prior to the life used in computing the investment credit, the tax for the year in which the property is so disposed of must be increased by the difference between the credit taken on such property and the credit which would have been allowed had the actual life been used. Such increase should be reported on the line specified on returns other than Form 1040. If you are filing Form 1040, add this amount to the tax to be reported on line 14, page 1, and also show the increase as a separate amount identified as "Inv. Cr." to the left of the total tax.

G. Limitations With Respect to Certain Persons.—In the case of (1) mutual savings banks, building and loan associations and cooperative banks, (2) a regulated investment company or a real estate investment trust subject to taxation under Subchapter M, and (3) a cooperative organization described in section 1381(a), the qualified investment and the $25,000 limitation shall equal such person's ratable share of such items in accordance with section 46(d)(2).

H. Carryback and Carryover of Unused Credits.—If the amount of the investment credit for any taxable year exceeds the limitation, the excess shall be an investment credit carryback to each of the 3 preceding taxable years and an investment credit carryover to each of the 5 succeeding taxable years and shall be added to the amount allowable as a credit for such years. A claim for refund based upon an unused investment credit carryback should be made on Form 843 or by filing an amended return for the year to which the unused credit is carried.

I. Basis and Cost.—The credit for new property applies to the basis of the property. The credit for used property applies to the cost of the property. The cost (of used property) does not include the basis of any property traded in. No adjustment for additional first-year depreciation or salvage value is required.

SPECIFIC INSTRUCTIONS

Line 1. New Property.—Enter the basis of property as described in General Instructions C and I placed in service during the taxable year. In the case of property constructed, reconstructed or erected by you, enter only that portion of the basis which is properly attributable to construction, reconstruction or erection after December 31, 1961.

Used Property.—Enter the cost (subject to dollar limitation below) of used property placed in service during the taxable year. See General Instruction I above.

Dollar Limitation on Used Property.—In general, the amount of used property taken into account may not exceed $50,000. In the case of a husband and wife filing separate returns, and each has used property taken into account on their returns, the amount may not exceed $25,000. In the case of a partnership, the $50,000 limitation shall apply with respect to the partnership and with respect to each partner. In the case of affiliated groups, the $50,000 limitation shall be reduced for each member of the group by apportioning $50,000 among the members of such group in accordance with their respective amounts of used property which may be taken into account.

Estates and Trusts.—In the case of an estate or trust the amount of the investment is apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

Line 6. Individuals and corporations filing forms other than Forms 1040 and 1120, use the tax figure shown on your return which is comparable to the figure to be used by a taxpayer using Form 1040 or 1120.

Line 9. Limitation Based on Amount of Tax.—In the case of a husband and wife filing separate returns and both have qualified investments, the amount specified on lines 9(a) and (b) shall be $12,500 instead of $25,000. In the case of affiliated groups the $25,000 specified on lines 9(a) and (b) shall be reduced for each member of the group by apportioning the $25,000 among the members of such group. In the case of an estate or trust the $25,000 limitation specified on lines 9(a) and (b) shall be reduced to an amount which bears the same ratio to $25,000 as the amount of qualified investment allocated to the estate or trust bears to the entire qualified investment.

☆☆☆☆ U.S. GOVERNMENT PRINTING OFFICE 1965—O-780-690

16—78812-1

SCHEDULE D (Form 1120)

U.S. Treasury Department—Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1965

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

PART I.—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—Assets Held More Than 6 Months—Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1. 1964 Oldsmobile	11-21-64	12-17-65	1,850.00	3,114.68

f. Depreciation allowed (or allowable) since acquisition (attach schedule)		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h) — OR — (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 — OR — Prior to January 1, 1964	f-2. After December 31, 1961 — OR — After December 31, 1963				
	2,076.44	1,038.24	811.76	811.76	
2. Total ordinary gain. Enter here and on line 11 and identify as gain from Part I				811.76	
3. Total other gain. Enter here and on line 4 and identify as gain from Part I					

PART II.—SALE OR EXCHANGE OF PROPERTY UNDER SECTION 1231

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
4.						
5. Total (If gain, enter on line 9; if loss, enter on line 11. Identify as gain or loss from Part II.)						

PART III.—CAPITAL ASSETS

Short-Term Capital Gains and Losses—Assets Held Not More Than 6 Months

6.							
7. Unused capital loss carryover (attach statement)							
8. Total of short-term capital gains or losses or difference between short-term capital gains and losses							

Long-Term Capital Gains and Losses—Assets Held More Than 6 Months

9.							
300	Ivan Allen - Huntsville	5-31-61	6-2-65	4,274.00		3,000.00	1,974.00
450	Ivan Allen - Rome	6-30-63	6-30-65	32,795.00		28,604.54	4,191.46
1,000	Xerox Corp.	1960-61	6-30-65	262,325.07		13,982.31	248,343.76
10. Total of long-term capital gains or losses or difference between long-term capital gains and losses							255,100.22

PART IV.—PROPERTY OTHER THAN CAPITAL ASSETS

11. Part I							811.76
12. Total net gain (or loss). Enter here and on line 15							811.76

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POOR COPY

Schedule D (Form 1120) 1969 Page 2

PART V.—TOTAL SCHEDULE D GAINS AND LOSSES

13. Enter the excess of net short-term capital gain (line 3) over net long-term capital loss (line 10)		255,109.22
14. Enter the excess of net long-term capital gain (line 10) over net short-term capital loss (line 9)		811.76
15. Net gain (loss) from property other than capital assets (line 12)		
16. Total (lines 13, 14, and 15). Enter here and on Form 1120, page 1, line 9		255,920.98

Alternative Tax Computation

(Component members of controlled corporate group use Form 3920 to compute your tax)

17. Taxable income (line 30, page 1, Form 1120)		
18. Net long-term capital gain reduced by any net short-term capital loss (line 14)		
19. Line 17 minus line 18		
20. If amount of line 19 is		
(a) **Not over $25,000**—Enter 22 percent of line 19		
(b) **Over $25,000**—Enter 48 percent of line 19		
Subtract $6,500 and enter difference	6,500.00	
21. 25 percent of line 18		
22. Alternative tax (line 20 plus line 21). If applicable, enter on line 3, Schedule J, Form 1120, and write "alt." in the margin to the right of the entry		

INSTRUCTIONS

(References are to the Internal Revenue Code)

Gains and losses from sales or exchanges of capital assets and other property.—Report sales or exchanges of capital assets and sales or exchanges of property other than capital assets in Schedule D. Every sale or exchange of property, even though no gain or loss may be indicated, must be reported in detail.

Losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges. However, the amount of a net capital loss not used in any taxable year may be carried over to each of the five succeeding taxable years (or to the extent such loss is not absorbed by the corporation's income in each of the ten succeeding taxable years, if any). A net capital loss shall be treated in each such succeeding taxable year as a short-term capital loss to the extent not absorbed by a deduction against any net capital gains of any taxable year intervening between the taxable year in which the net capital loss was sustained and the taxable year to which carried.

Definition of capital assets.—The term "capital assets" means property held by the taxpayer (whether or not connected with its trade or business) but does not include (1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or (2) property used in the trade of the taxpayer of a character which is subject to the allowance for depreciation provided in section 167, or real property used in the trade or business of the taxpayer, or (3) [illegible] musical, or artistic compositions, or [illegible] accounts or notes receivable acquired in the ordinary course of the trade or business of the taxpayer for services rendered or from the sale of property described in (1) above, or (4) [illegible] or any of the [illegible] third sentence of section 1221 of the Internal Revenue Code of 1939, or (5) [illegible] maturity date [illegible] year [illegible]

Pass [illegible]

Losses on securities becoming worthless.—[illegible] be [illegible] from a bank [illegible] from [illegible] of section [illegible]

Losses not allowable.—No loss is recognized for wash sales of stock or securities. [illegible]

No loss is allowed [illegible] related persons. Section [illegible]

Gains from section 1245 or 1250 property held more than 6 months (Part I).—*(Report any gain from such property held for 6 months or less in Part IV.)* Except as provided below section 1245 property means depreciable (a) personal property (other than livestock) including intangible personal property; (b) [illegible] real property except for buildings and their structural components) if used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services or used as a research or storage facility in connection with these activities; and (c) elevators or escalators.

Except as provided below section 1250 property means depreciable real property (other than section 1245 property).

See sections 1245(b) and 1250(d) for exceptions and limitations involving: (a) [illegible] gift, (b) certain tax free transactions, (c) like kind exchanges, involuntary conversions, and (d) sales or exchanges to effectuate FCC policies and exchanges to comply with SEC orders.

Column f of Part I.—In computing depreciation allowed or allowable for amounts or adjustments enter in column f-1 depreciation prior to July 1, 1963, and in column f-2 depreciation after June 30, 1963.

Column i of Part I, section 1250 property only.—If held for more than 6 months but not more than 1 year enter the smaller of

(1) column h, or
(2) column f-2.

If held for more than 1 year enter the result of multiplying the smaller of

(1) column h, or
(2) column f-2 less the amount of depreciation computed for the same period using the straight line method

by the [illegible] percentage by multiplying [illegible] one percentage point for each full month [illegible] was held in excess of [illegible] months. [illegible] have been made with respect to [illegible] section 1250(d).

Gain on sales by a "controlled" corporation.—In the case of a [illegible] or more [illegible] of property between [illegible] a difference [illegible] percent in value of the [illegible] individual, [illegible] corporation, [illegible] any gain recognized [illegible] shall be treated [illegible] property which is neither a capital asset nor [illegible] section 1231, if such property is [illegible] of the transferee [illegible] section 1231. See section 1239.

Installment sales.—If you sold personal property for more than $1,000 or real property for any amount you may elect to report gain on the installment method if [illegible] payments in the year of sale do not exceed 30% of the selling price. Section 453.

For treatment of a portion of payments as "unstated interest" [illegible] see section 483.

(Instructions continued on reverse of duplicate)

16—[illegible]

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

DIVIDENDS RECEIVED

Xerox
3M Company
Southern Airways
Ivan Allen Company - Huntsville, Ala.
- Athens, Tenn.
- Augusta, Ga.
- Gainesville, Ga.
- Columbus, Ga.
- Rome, Ga.
- Greenville, S. C.

OTHER INCOME

Discount earned
Vendor's compensation, sales tax
Purchase charges to subsidiaries

COMPENSATION OF OFFICERS

	Compensation
Ivan E. Allen, Chairman	$ 12,525.16
W. H. Glenn, President	33,025.00
H. C. Jones, Exec. Vice-President	26,325.00
W. F. Floyd, Jr., Sec. - Treas.	24,358.34
J. H. Carnes, Vice-President	25,506.79
W. D. Harris, Vice-President	26,325.00
J. H. Murphy, Vice-President	18,025.00
	$166,090.29

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

TAXES		
City, state and county	$43,254.21	
Intangibles	1,629.91	
Domestic corp.	1,000.00	
Business licenses	966.81	
Automobile and truck	325.40	
Corporation registration	1.00	
Pay roll	66,139.90	$113,317.23
Less taxes charged to cost of sales		13,912.02
		$ 99,405.21
GEORGIA		
Georgia income tax - current year	$26,028.95	
- prior years	54.48	26,083.43
		$125,488.64
CONTRIBUTIONS		
Atlanta Arts Festival		$ 240.40
Empty Stocking fund		500.00
Chattanooga 150 fund		100.00
Booster Club		50.00
United Appeal		5.95
Buckhead Lions Club		70.00
Junior League		75.00
North Springs Board of Education		25.00
Christien City		100.00
West End Boys Club		50.00
Allen Foundation, Inc.:		
149 shares 3M Co. - Cost, prior to 1960, $3,045.82 fair market value 6-10-66	$11,230.98	
165 shares Southern Airways - cost, prior to 1960, $600.00; fair market value 6-10-66	2,805.00	
50 shares Xerox Corp. - cost 1961 $240.00; fair market value 6-10-66	12,500.00	26,535.98
		$ 27,752.33
Add contribution carryover from 6-30-65 - federal		1,659.10
		$ 29,411.43

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

OTHER DEDUCTIONS	
Travel and entertainment	$ 47,281.39
Telephone and telegraph	31,784.80
Postage	17,622.95
Dues and subscriptions	31,806.27
Sales promotion	4,423.05
Stationery and supplies	59,432.20
Heat, power and water	18,805.53
Truck and delivery	40,339.91
Amortization, leaseholds	3,267.00
Insurance	28,440.54
Employees welfare	2,553.05
Administrative charges to subsidiaries	(61,450.00)
Legal and professional	9,580.81
Credits and collections	1,453.65
Bank charges	676.31
Contract services	16,547.97
Directors fees	1,950.00
Rent commissions	2,704.66
Pensions	2,540.50
Miscellaneous	17,882.04
	$277,642.63

QUESTION I (1) FEDERAL RETURN	
Ivan Allen Company of Albany, Ga.	96.00%
Ivan Allen Company of Athens, Ga.	100.00
Ivan Allen Co. of Athens, Tenn.	66.67
Ivan Allen Co. of Augusta, Ga.	66.67
Ivan Allen Co. of Chattanooga, Tenn.	100.00
Ivan Allen Co. of Columbus, Ga.	66.67
Ivan Allen Co. of Gainesville, Ga.	90.00
Ivan Allen Co. of Greenville, S. C.	60.00
Ivan Allen Co. of Huntsville, Ala.	84.00
Ivan Allen Co. of Macon, Ga.	66.67
Ivan Allen Co. of Rome, Ga.	66.67

FORM 2950
(Rev. July 1962)
U.S. Treasury Department
Internal Revenue Service

STATEMENT IN SUPPORT DEDUCTION
For Payments to an Employees' Pension, Profit-Sharing, Stock Bonus Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan

Name and address

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Employer taxable year ended: June 30, 1966

Employer identification No.: 58-0136820

PART I.—DEDUCTION CLAIMED UNDER SECTION 404(a)(1), (2), (3), or (7)

1. Name of plan:
Profit sharing pension plan of Ivan Allen Company and subsidiaries

2. Type of plan:
☐ Pension or annuity ☒ Profit-sharing ☐ Stock bonus

3. If a favorable determination letter has been received indicating that this plan qualifies under section 401 of the Code, give date of most recent determination letter: July 17, 1956

4. Medium of funding: (Check each applicable box)

(a) Trusteed plan:
- ☐ Individual annuity contracts
- ☒ Individual contracts containing life insurance
- ☐ Self-administered
- ☐ Other (Specify)

(b) Nontrusteed plan:
Group contract:
- ☐ Deposit administration
- ☐ Deferred annuity
- ☐ Group permanent
- ☐ Individual annuity contracts
- ☐ Other (Specify)

5. Total number of employees as of the close of the year for each of the following groups based on reasonable estimates:

(a) Employees ineligible because of requirements as to:

(i) Temporary, seasonal, part-time		(iv) Minimum age and not included in (i) through (iii)	2
(ii) Job classification and not included in (i) (e.g., hourly paid, etc.)		(v) Minimum pay (Solely)	
(iii) Length of service and not included in (i) or (ii)	254	(vi) Other and not included in (i) through (v) (Specify)	
		(vii) Totals ((i) through (vi))	

(b) Employees eligible for coverage but not covered by plan: -
(c) Employees covered by plan: 148
(d) Total of all employees (lines (a)(vii), (b), and (c)): 404
(e) If you claim that the requirements of section 401(a)(3)(A) are satisfied, check here ☒ and attach necessary data and computation to substantiate.

6. In the case of:
(a) Trust—Attach a detailed balance sheet and a detailed statement of receipts and disbursements.
(b) Nontrusteed Annuity Plan—Attach a detailed statement including for each insurer (1) the name of the insurer, (2) the contributions paid by the employer, (3) the contributions paid by the employees, and (4) the amounts and kinds of premium refunds or similar credits made available and the disposition of such credits.
(c) Pension or Annuity Plan—For each year a summary of the costs or liabilities and adjustments under the plan based on the application of the methods, factors, and assumptions used under the plan must be submitted in sufficient detail to permit ready verification of the reasonableness thereof.

7. (a) Total nondeferred compensation paid or accrued for all employees under the plan		$1,156,306.07
(b) Total nondeferred compensation paid or accrued for all employees		$2,398,544.79
(c) Total amount of contributions allocated for the benefit of employees, former or retired employees, or their beneficiaries (including any insurance provided thereby or directly related thereto)	$ -	
Less: Employee contributions	-	$ -
(d) If a profit-sharing or stock bonus plan: (i) Amount originally allocated in the year		$ 87,827.81
(ii) Amount reallocated in the year (forfeitures)		$ 2,726.76

8. Determination of total contributions subject to limitations:

(a) Contributions by the employer during taxable year (from schedule A, Part II)	$ 87,827.81
(b) Contribution carryover from previous years (from schedule B, Part II)	$
(c) Total contributions subject to limitations ((a) plus (b))	$ 87,827.81
(d) (i) Total amount deductible without regard to section 404(a)(7) (lesser of (c) or applicable limitations)	$ 87,827.81
(ii) Carryover to future years ((c) less (d)(i))	$ -

9. Statement required with respect to each of the 25 highest-paid employees covered by the plan OR participating stockholder-employees who own more than 5 percent of the v r stock and who are among the 25 highest paid, whever is applicable. (See instructions.)

	EMPLOYEE NAME (The letters on each line identify the line entries for the employee in the following sections of the form) (a)	Is Employee an Officer (b) Yes	Is Employee an Officer (b) No	Percent of Voting Stock Owned (see instructions) (c)	Are Principal Duties Supervisory (d) Yes	Are Principal Duties Supervisory (d) No	Year of Birth (e)	Length of Service for Employer (years) (f)
A	Ivan Allen, Sr.	X		31.20	X		1876	65
B	Ivan Allen, Jr.		X	45.46	X		1911	35
C	W. H. Glenn, Jr.	X		6.44	X		1913	15
D								
E								
F								
G								
H								
I								
J								
K								
L								
M								
N								
O								
P								
Q								
R								
S								
T								
U								
V								
W								
X								
Y								

EMPLOYEE	NONDEFERRED COMPENSATION: Basic Compensation and Overtime (g)	Other Direct Payments (h)	Other Than Cash (i)	TOTAL (j)	Amount Allocated for the Benefit of the Employee or Beneficiary (Include any insurance provided thereby or directly related thereto), less Employee's Contributions: Under Each Other Plan of Deferred Compensation (k)	Under This Plan (l)	If Profit-Sharing or Stock Bonus Plan: Amount Allocated in the Year Originally (m)	If Profit-Sharing or Stock Bonus Plan: Amount Reallocated in the Year (n)
A	12,525			12,525	-	1,202.45	1,166.25	36.20
B	15,025			15,025	-	1,007.46	977.12	30.34
C	33,025			33,025	-	877.47	851.04	26.43
D								
E								
F								
G								
H								
I								
J								
K								
L								
M								
N								
O								
P								
Q								
R								
S								
T								
U								
V								

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

FORM 2950 - PART I SEC. 7 (d) (i)

	Charged to expense	Credited to employees
Ivan Allen Company - Atlanta, Ga.	$ 70,000.00	$ 72,173.25
- Albany, Ga.	926.69	955.46
- Athens, Tenn.	1,166.25	1,202.45
- Augusta, Ga.	1,708.39	1,761.44
- Chattanooga, Tenn.	1,588.62	1,637.94
- Columbus, Ga.	1,311.24	1,351.95
- Gainesville, Ga.	1,676.87	1,728.94
- Greenville, S. C.	3,788.72	3,906.35
- Huntsville, Ala.	806.92	831.97
- Macon, Ga.	2,546.83	2,625.90
- Rome, Ga.	2,307.28	2,378.92
	$ 87,827.81	$ 90,554.57
Forfeitures	2,726.76	-
	$ 90,554.57	$ 90,554.57

TRUST FUND BALANCE SHEET

ASSETS

Cash and due from employer	$ 91,850.75
Securities (at market value 6-30-66)	826,797.21
Accrued income	4,216.89
	$922,864.85

LIABILITIES

Insurance premiums payable	$ 19,220.39
Allocated to members	903,644.46
	$922,864.85

TRUST FUND INCOME

Employer contribution		$ 87,827.81
Dividends and interest received		32,326.24
Insurance refunds		408.13
Net increase in accrued income		361.97
		$120,924.15
Deduct:		
Loss on sale of, and decline in market value of securities	$ 49,454.46	
Insurance premiums paid	20,802.46	
Benefits to members	11,956.36	82,213.28
		$ 38,710.87

EMPLOYEE	EMPLOYEE CONTRIBUTIONS UNDER THIS PLAN (o)	IF PENSION OR ANNUITY PLAN: Retirement Age (p)	Expected Date of Retirement (q)	Form of Retirement Benefit (r)	Annual Rate or Amount of Retirement Benefit (s)	Aggregate of All of the Employee's Contributions Under the Plan (t)
Y						
Total						
A						
B						
C						
D						
E						
F						
G						
H						
I						
J						
K						
L						
M						
N						
O						
P						
Q						
R						
S						
T						
U						
V						
W						
X						
Y						
Total						

10. Have you attached copies of the following which you are required to submit for the **first taxable year** for which a deduction is claime or for **subsequent years** if there is any **change** in the plan, instruments, methods, factors or assumptions?

ITEM	YES	NO
a. Verified copies of all instruments constituting the plan, including trust indentures, group annuity contracts, specimen copy of each type of individual contract, and specimen copy of formal announcement and comprehensive detailed description to employees, with all amendments to any such instruments.	X	
b. A statement which sets forth: (1) Name or names of employers.	X	
(2) Effective date of the plan and any amendments thereto	X	
(3) Method of distribution or of disbursing benefits (whether by trustee, insurance company, or otherwise).	X	
(4) Dates when the instruments or amendments were executed.	X	
(5) Date of formal announcement.	X	
(6) Dates when comprehensive detailed description of the plan and of each amendment thereto were made available to employees generally.	X	
(7) Date when plan was put into effect.	X	
(8) Date when trust or contract and any amendments thereto were put into effect so that contributions thereunder were irrevocable.	X	

ITEM	YES	NO
c. A summary of the provisions and rules relating to: (1) Employee eligibility requirements for participation in the plan.	X	
(2) Employee contributions.		X
(3) Employer contributions.	X	
(4) The basis or formula for determining the amount of each type of benefit and the requirements for obtaining such benefits and the vesting conditions.	X	
(5) The discontinuance or modification of the plan and distributions or benefit payments upon liquidation or termination.		X
d. If pension or annuity plan, a detailed description of all the methods, factors, and assumptions used in determining costs and in adjusting the cost for actual experience under the plan (including any loadings, contingency reserves, or special factors and the basis of any insured costs or liabilities involved therein) explaining their source and application in sufficient detail to permit ready analysis and verification thereof, and in the case of a trust, a detailed description of the basis used in valuing the investments held.		X

PART II.—DETERMINATION OF ALLOWABLE DEDUCTION

Schedule A—Employer Contribution (See instructions)

Check whether contributions were made in: ☒ Cash ☐ Other than cash

Dates Paid	Amount	Dates Paid	Amount
Paid	18,000.00		
Accrued			
6-27-66			
Paid			
9-9-66	69,827.81		
		Total	87,827.81

Schedule B—Contribution Carryover

(Complete the following for each of the six taxable years, prior to the current year, without regard to section 404(a)(7))

Year Ended (a)	Amount Contributed (b)	Amount Deductible (c)	Cumulative Carryover To Succeeding Years (d)
19..			
19..			
19..			
19..			
19..			
19..			

Cumulative carryover equals column (d) from previous year plus column (b) for current year, less column (c) for current year. (See instructions.)

SCHEDULE C.—PENSION TRUSTS AND ANNUITY PLANS (Complete either I or II)

I. Section 404(a)(1)(A) and (B) Limitations

1. Total nondeferred compensation paid or accrued during taxable year to all covered employees (from line 7(a) Part I) — $
2. Limitation under section 404(a)(1)(A)—5 percent of line 1 (unless limitation has been reduced) — $
3. Limitation under section 404(a)(1)(B) if aggregate cost method is used (See Regs., section 1.404(a)-5(c)) — $
4. Total of lines 2 and 3 if aggregate cost method is used — $
5. (a) Gross annual premiums under "Individual Contract Plan" (see instructions) — $
   (b) Less: Dividends and other credits — $
   (c) Net premiums due (line 5(a) less line 5(b)) — $

II. Section 404(a)(1)(C) Limitations

1. Normal cost (current year's service cost) — $
2. Total past service or supplemental base — $
3. 10 percent of line 2 (see instructions) — $
4. Total of lines 1 and 3 — $
5. Less: Credits and gains — $
6. Net limitation (line 4 less line 5) — $

SCHEDULE D.—PROFIT-SHARING AND STOCK BONUS PLANS (Section 404(a)(3)(A) Limitations)

1. Total nondeferred compensation paid or accrued for all employees under the plan (from line 7(a), Part I) — $ 1,156,306.07
2. Limitation—15 percent of compensation shown on line 1 — $ 173,445.91
3. Contributions by the employer during the year (from line 8(a), Part I) — $ 87,827.81
4. Contribution carryover from previous years (from line 8(b), Part I) — $ -
5. Total contributions subject to limitation (from line 8(c), Part I) — $ 87,827.81
6. Credit carryover (Attach computations) — $ -
7. Limitations: Primary (lesser of line 5, or line 2) or secondary* — $ 87,827.81

*Secondary (smallest of line 3, line 2 plus line 6, or two times line 2). Secondary limitation applies only if there is a credit carryover on line 6.

SCHEDULE E.—Section 404(a)(7) Limitations. (See instructions)

1. Amount deductible for year under section 404(a)(7):
   (a) 30 percent of covered compensation in year — $
   (b) (i) 25 percent of covered compensation in year — $
   (ii) Total amount otherwise deductible for year — $
   (iii) Smaller of (i) or (ii) — $
   (iv) Carryover from prior years under section 404(a)(7) (attach computation) — $
   (v) Sum of (iii) and (iv) — $
   (c) Amount deductible (lesser of (a) or (b)(v)) — $
2. Carryover to succeeding years under section 404(a)(7) (line 1(b)(iv) plus line 1(b)(ii) less line 1(c)) — $

PART III.—DEDUCTION CLAIMED UNDER SECTION 404(a)(5)

1. Type of plan: ☐ Pension or annuity ☐ Profit-sharing ☐ Stock bonus ☐ Other plan of deferred compensation
2. The amount of the deduction — $
3. Total number of employees covered
4. Total number of employees employed

5. Was the amount deducted paid:
   ☐ Directly to an employee, a former employee, or his beneficiary
   ☐ To a trust ☐ To an insurance company ☐ To another person

6. Have you attached a statement containing such information as is necessary to show that the deduction is not allowable under section 404(a)(1), (2), (3), and (7), that the amount paid is an ordinary and necessary expense or an expense for the production of income and that the employees' rights to, or derived from, the employer's contribution or deferred compensation were nonforfeitable at the time the contribution or compensation was paid? ☐ Yes ☐ No

☆ U.S. GOVERNMENT PRINTING OFFICE : 1967—O-691-588

TAX SCHEDULE - 58-0136820

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

BALANCE SHEETS

	6-30-65	6-30-66
Other investments:		
Marketable securities	$154,222.24	$135,754.11
Investments in subsidiaries	351,141.38	350,282.30
	$505,363.62	$486,036.41
Other assets:		
Cash value of life insurance	$176,864.59	$192,363.16
Prepaid expenses	28,811.61	21,713.76
Leasehold improvements - net	19,829.13	16,562.11
	$225,505.33	$230,639.03
Other current liabilities:		
Income taxes	$151,521.21	$208,533.90
Other taxes	89,819.67	80,198.71
Accrued salaries and wages	16,557.54	18,663.35
Accrued interest	414.69	394.49
Accrued profit sharing pension contribution	59,786.78	69,827.81
	$318,099.89	$377,618.24

Form 1120 (1965) Page 3

Schedule I—SPECIAL DEDUCTIONS

(Small business investment companies and members of affiliated groups—see instructions)

1. Dividends received: (a) 85 percent of column 2, Schedule C	51,388.86
(b) 60.208 percent of column 3, Schedule C	
(c) 85 percent of dividends received from certain foreign corporations	
2. Total dividends-received deductions (sum of lines 1(a), (b), and (c) but not to exceed 85 percent of the excess of line 28, page 1 over line 4 of this schedule). (The 85-percent limitation does not apply to a year in which a net operating loss occurs.)	51,388.86
3. Dividends paid on certain preferred stock of public utilities (see instructions in case of net operating loss)	
4. Western Hemisphere trade corporations (not allowable in year of net operating loss)	
5. Total special deductions—Add lines 2, 3, and 4. Enter here and on line 29(b), page 1	51,388.86

SCHEDULE J—TAX COMPUTATION

(Component members of controlled corporate group use Form 3920 to compute your tax)

1. Taxable income (line 30, page 1)		
2. If amount on line 1 is:		
(a) **Not over $25,000**—Enter 22 percent of line 1		
(b) **Over $25,000**—Enter 48 percent of line 1		
Subtract $6,500 and enter difference	6,500.00	
3. Income tax (line 2, or line 22 of separate Schedule D, whichever is lesser)		
4. Foreign tax credit (attach Form 1118)		
5. Balance (line 3 less line 4)		
6. Investment credit (attach Form 3468)		3486.77
7. Balance of income tax (line 5 less line 6)		
8. Tax under section 541 of the Internal Revenue Code (attach Schedule 1120 PH)		
9. Tax from recomputing prior year investment credit (attach statement)		
10. Total tax—Add lines 7, 8, and 9. **Enter here and on line 31, page 1**		

H. Date incorporated 12-5-02

I. (1) Did the corporation at the end of the taxable year own directly or indirectly 50 percent or more of the voting stock of a domestic corporation? Yes ☒ No ☐

(2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50 percent or more of the corporation's voting stock? Yes ☐ No ☒

(For rules of attribution, see section 267 (c).)

If the answer to (1) or (2) is "Yes," attach separate schedule showing:

(a) name, address, and employer identification no.; and (b) percentage owned.

If the answer to (1) above is "Yes," include the taxable income (or loss) of such corporation for the taxable year ending with or within your taxable year.

J. Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒

If "Yes," see inst. K. Enter amount here

K. Did you at any time during the year own directly or indirectly any stock of a foreign corporation? Yes ☐ No ☒

If "Yes," attach statement required by instruction N.

L. Amount of taxable income (or loss) for: 1962.. 374,114.60 1963.. 437,962.77 1964.. 341,045.82

M. Did you claim a deduction for expenses connected with:

(1) A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐ or other similar facility ☐? (Other than where the operation of the facility was the principal business.) Yes ☐ No ☒

(2) The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by customers or employees or members of their families? (Other than use by employees while in business travel status.) Yes ☐ No ☒

(3) The attendance of your employees' families at conventions or business meetings? Yes ☐ No ☒

(4) Vacations for employees or members of their families? (Other than amount reported on Form W-2.) Yes ☐ No ☒

N. Refer to instructions and state the:

Principal business activity office outfitters

Principal product or service

O. Were you a member of a controlled group subject to the provisions of section 1561? Yes ☐ No ☒ or section 1562? Yes ☒ No ☐

If "Yes," check type of relationship.

(1) parent-subsidiary ☒

(2) brother-sister ☐

(3) combination of (1) and (2) ☐ (see section 1563)

P. Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1965? Yes ☒ No ☐

If "Yes," where were they filed? Atlanta, Ga.

Q. Were distributions made to stockholders during the taxable year from other than (a) earnings and profits of the current year or (b) earnings and profits accumulated from February 28, 1913? Yes ☐ No ☒ If "Yes," was the determination made in accordance with Revenue Procedure 65-10? Yes ☐ No ☐

R. Was there any substantial change in the manner of determining quantities, costs or valuations between opening and closing inventory? Yes ☐ No ☒

If "Yes," attach explanation.

S. Were you a U.S. shareholder of any controlled foreign corporation? Yes ☐ No ☒ (see sections 951 and 957.) If "Yes," attach Form 3646 for each such corporation.

Form 1120 (1965) — Page 4

Schedule L—BALANCE SHEETS (See Instructions)

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1. Cash		319,726.66		435,721.37
2. Notes and accounts receivable	776,084.23		972,709.97	
(a) Less allowance for bad debts		776,084.23		972,709.97
3. Inventories		569,214.25		660,081.03
4. Investments in Government obligations				
5. Other current assets (attach schedule)				
6. Loans to stockholders				
7. Other investments (attach schedule)		505,363.62		486,036.41
8. Buildings and other fixed depreciable assets	1,430,305.92		1,500,075.03	
(a) Less accumulated depreciation	485,614.83	944,691.09	552,448.05	947,626.98
9. Depletable assets				
(a) Less accumulated depletion				
10. Land (net of any amortization)		377,250.00		433,625.00
11. Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12. Other assets (attach schedule)		225,505.33		230,639.07
13. Total assets		3,717,835.18		4,166,439.83
LIABILITIES AND CAPITAL				
14. Accounts payable		460,409.29		441,633.20
15. Mtges., notes, bonds payable in less than 1 yr.		14,922.11		15,653.84
16. Other current liabilities (attach schedule)		318,099.89		377,618.24
17. Loans from stockholders				
18. Mtges., notes, bonds payable in 1 yr. or more		290,865.48		275,201.64
19. Other liabilities (attach schedule)				
20. Capital stock: (a) Preferred stock				
(b) Common stock	376,860.00	376,860.00	414,470.00	414,470.00
21. Paid-in or capital surplus (attach reconciliation)		56,493.64		281,706.39
22. Surplus reserves (attach schedule)				
23. Earned surplus and undivided profits		2,200,184.77		2,360,146.52
24. Total liabilities and capital		3,717,835.18		4,166,439.83

ITEMIZED ENTRIES MADE BELOW MUST BE IDENTIFIED BY ACCOUNT

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1. Net income per books	450,501.83	7. Income recorded on books this year not included in this return (itemize)	
2. Federal income tax Accrued	233,758.83	Increase in C.S.V., Life insurance in excess of cost	1,700.51
3. Excess of capital losses over capital gains			
4. Taxable income not recorded on books this year (itemize)		8. Deductions in this tax return not charged against book income this year (itemize)	
		Contributions carry-over from F.Y.E. 6-30-65	1,659.10
5. Expenses recorded on books this year not deducted in this return (itemize)		9. Total of lines 7 and 8	3,359.61
6. Total of lines 1 through 5	684,260.66	10. Income (line 28, page 1)—line 6 less 9	680,901.05

Schedule M-2—ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS PER BOOKS (line 23, page 4)

1. Balance at beginning of year		5. Distributions: (a) Cash	52127.47
2. Net income per books		(b) Stock	212333.75
3. Other increases (itemize)		(c) Property	
		6. Other decreases (itemize)	
		Schedule	1777
4. Total of lines 1, 2, and 3		7. Total of lines 5 and 6	
		8. Balance end of year (line 4 less 7)	

BALANCE SHEET

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

June 30, 1965

ASSETS			
CURRENT ASSETS			
Cash on hand and in bank			$ 319,726.66
Accounts receivable, customers			776,084.23
Inventories (at lower of cost or market):			
Furniture		$ 161,456.95	
Stationery		181,089.62	
Drafting and engineering		96,319.85	
Quick-copy		9,321.76	
Printing		101,822.12	
60 Peachtree Street		19,203.95	569,214.25
TOTAL CURRENT ASSETS			$1,665,025.14
INVESTMENTS			
Marketable securities (at cost; market value $1,634,591.75)		$ 154,222.24	
Investments in subsidiaries - at cost:			
Investments	$ 230,330.88		
Advances	120,810.50	351,141.38	505,363.62
PROPERTY, PLANT AND EQUIPMENT (at cost less depreciation)			
Rental property (note A):			
Land	$ 377,250.00		
Buildings	1,092,193.88		
	$1,469,443.88		
Less allowance for depreciation	259,717.00	$1,209,726.88	
Furniture and fixtures	$ 28,636.69		
Less allowance for depreciation	16,693.45	11,943.24	
Automobiles and trucks	$ 55,994.57		
Less allowance for depreciation	34,167.70	21,826.87	
Machinery and equipment	$ 253,480.78		
Less allowance for depreciation	175,036.68	78,444.10	1,321,941.09
DEFERRED CHARGES AND OTHER ASSETS			
Cash surrender value of life insurance		$ 176,864.59	
Unexpired insurance premiums		8,276.95	
Sundry receivables and prepayments		20,534.66	
Leasehold improvements (at cost less $11,715.73)		19,829.13	225,505.33
			$3,717,835.18

Note A - Land and building located at 1740 Peachtree Street with a depreciated cost valuation of $301,232.67 is pledged to secure a first mortgage note due Bibb Manufacturing Co., with a balance of $305,787.59 as of June 30, 1965.

LIABILITIES			
CURRENT LIABILITIES			
Current maturities of long-term notes (note A)			$ 14,922.11
Accounts payable, trade			386,120.94
Accounts payable to subsidiaries			74,288.35
Taxes on income estimated:			
Current year		$ 115,348.64	
Prior years		36,172.57	151,521.21
Accrued liabilities:			
Salaries and wages		$ 16,557.54	
Taxes, other than taxes on income		89,829.67	
Interest		414.69	
Profit sharing pension contribution		59,786.78	166,578.68
TOTAL CURRENT LIABILITIES			$ 793,431.29
LONG-TERM DEBT			
5 1/2% first mortgage note, due in monthly installments of $2,614.00 each, including principal and interest; secured (note A)		$ 305,787.59	
Less current maturities		14,922.11	290,865.48
CAPITAL			
Contributed capital:			
Common stock, authorized 40,000 shares of $10.00 par value; issued and outstanding 37,686 shares	$376,860.00		
Capital contributed in excess of par value of stock	50,129.00		
Contributed capital arising from liquidation of subsidiary	6,364.64	$ 433,353.64	
Retained earnings:			
Unappropriated		2,200,184.77	2,633,538.41
			$3,717,835.18

STATEMENT OF INCOME

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

Net profit from operations:			
Furniture			$ 17,752.39
Stationery			79,402.45
Drafting and engineering			25,856.08
Quick-copy			35,549.70
Printing			65,726.84
60 Peachtree			39,881.81
TOTAL NET PROFIT FROM OPERATIONS			$264,169.27
Other income:			
Discount earned		$ 77,074.94	
Interest received		15,105.96	
Dividends received		59,293.63	
Bad debt recoveries		1,242.31	
Rent income:			
972 Marietta Street	$18,000.00		
56 Pryor Street	12,837.80		
660 Forrest Road	19,800.00		
1740 Peachtree Street	47,493.96		
221 Ivy Street	67,185.00	159,325.76	
Profit on sale of assets		1,657.04	
Vendor's compensation, sales tax		224.52	323,014.16
			$587,183.43
Other deductions:			
Interest expense		$ 70,680.94	
Rental property expense:			
Rent paid	$24,199.96		
Commissions	1,375.08		
Taxes	20,179.42		
Insurance	1,886.39		
Depreciation	47,919.70		
Repairs, buildings	6,859.43	93,419.98	
Life insurance, officers, net		(1,123.25)	
Pensions		1,808.60	
Sundry		197.53	115,813.80
NET INCOME BEFORE PENSION CONTRIBUTION			$471,369.63
Profit sharing pension contribution			60,000.00
NET INCOME BEFORE INCOME TAXES			$411,369.63
Income taxes, estimated:			
Federal		$161,544.98	
State		17,339.67	178,784.65
NET INCOME			$232,584.98

DEPARTMENTAL STATEMENT OF OPERATIONS

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1965

	Furniture	Stationery	Drafting and Engineering
Sales	$1,944,786.37	$1,838,495.54	$577,578.11
Freight on sales, net	(429.47)	(6.66)	(5.00)
NET SALES	$1,944,356.90	$1,838,488.88	$577,573.11
Cost of sales:			
Inventory, June 30, 1964	$ 159,949.97	$ 153,841.02	$ 70,648.37
Purchases, finished goods	1,439,143.47	1,286,888.41	424,303.54
Freight in	42,954.40	23,769.37	10,913.58
Cost of goods manufactured	-	-	-
	$1,642,047.84	$1,464,498.80	$505,865.49
Less inventory, June 30, 1965	161,456.95	181,089.62	96,319.85
COST OF SALES	$1,480,590.89	$1,183,409.18	$409,545.64
GROSS PROFIT	$ 463,766.01	$ 655,079.70	$168,027.47
Expenses:			
Selling	$ 254,598.97	$ 300,932.33	$ 92,226.24
Warehouse and delivery	87,255.06	133,061.18	15,654.26
Administrative	238,837.13	186,896.14	53,398.90
	$ 480,691.16	$ 620,889.65	$161,279.40
	$ (16,925.15)	$ 34,190.05	$ 6,748.07
Profit on special sales	6,312.57	45.32	200.30
Charges to subsidiaries	28,365.97	45,167.08	18,907.71
NET PROFIT FROM OPERATIONS	$ 17,753.39	$ 79,402.45	$ 25,856.08

Quick-copy	Printing	60 Peachtree	Total
$284,058.94	$1,591,798.64	$267,867.[illegible]	$6,504,584.84
-	(2,793.23)	(90.72)	(3,325.08)
$284,058.94	$1,589,005.41	$267,776.52	$6,501,259.76
$ 3,916.15	$ 32,957.90	$ 22,547.35	$ 443,860.76
-	90,709.00	148,614.04	3,289,658.46
-	11.81	264.59	77,943.75
152,502.77	1,045,195.46	-	1,197,698.23
$156,418.92	$1,168,874.17	$171,425.98	$5,009,161.20
3,823.66	36,666.16	19,203.95	498,660.19
$152,595.26	$1,132,208.01	$152,222.03	$4,510,501.01
$131,463.68	$ 456,797.40	$115,554.49	$1,990,685.75
$ 57,380.94	$ 241,695.49	$ 48,177.66	$ 995,011.63
6,493.70	26,557.61	21,795.02	290,816.83
32,039.34	122,817.46	5,700.00	539,688.91
$ 95,913.98	$ 391,070.56	$ 75,672.68	$1,825,517.37
$ 35,549.70	$ 65,726.84	$ 39,881.81	$ 165,144.38
-	-		6,857.13
-	-	-	90,140.26
$ 35,549.70	$ 65,726.84	$ 39,881.81	$ 64,169.[illegible]

BALANCE SHEET

IVAN ALLEN COMPANY, ATLANTA, GEORGIA

June 30, 1966

ASSETS			
CURRENT ASSETS			
Cash on hand and in bank			$ 435,721.37
Accounts receivable, customers			972,709.97
Inventories (at lower of cost or market):			
Furniture		$ 212,037.74	
Stationery		192,513.56	
Drafting and engineering		110,648.65	
Quick-copy		10,391.77	
Printing		114,313.63	
60 Peachtree Street		20,175.68	660,081.03
TOTAL CURRENT ASSETS			$2,068,512.37
INVESTMENTS			
Marketable securities (at cost; market value $2,551,210.50)		$ 135,754.11	
Investments in subsidiaries - at cost:			
Investments	$ 198,726.34		
Advances	151,555.96	350,282.30	486,036.41
PROPERTY, PLANT AND EQUIPMENT - (at cost less depreciation)			
Rental property (note A):			
Land	$ 433,625.00		
Buildings	1,092,193.88		
	$1,525,818.88		
Less allowance for depreciation	305,764.46	$1,220,054.42	
Furniture and fixtures	$ 57,744.49		
Less allowance for depreciation	24,910.04	32,834.45	
Automobiles and trucks	$ 76,421.99		
Less allowance for depreciation	29,074.54	47,347.45	
Machinery and equipment	$ 273,714.67		
Less allowance for depreciation	192,699.01	81,015.66	1,381,251.98
DEFERRED CHARGES AND OTHER ASSETS			
Cash surrender value of life insurance		$ 192,363.18	
Unexpired insurance premiums		10,473.86	
Sundry receivables and prepayments		11,239.90	
Leasehold improvements (at cost less $14,982.73 amortization)		16,562.13	230,639.07
			$4,166,439.83

Note A - Land and building located at 1740 Peachtree Street with a depreciated cost valuation of $288,135.54 is pledged to secure a first mortgage note due Bibb Manufacturing Co., with a balance of $290,865.48 as of June 30, 1966.

LIABILITIES			
CURRENT LIABILITIES			
Current maturities of long-term notes (note A)			$ 15,663.84
Accounts payable trade			441,633.20
Taxes on income for the year ended June 30, 1966, estimated			208,533.90
Accrued liabilities:			
Salaries and wages		$ 18,663.36	
Taxes, other than taxes on income		80,198.71	
Interest		394.46	
Profit sharing pension contribution		69,827.81	169,084.34
TOTAL CURRENT LIABILITIES			$ 834,915.28
LONG-TERM DEBT			
5 1/2% first mortgage note due in monthly installments of $2,614.00 each, including principal and interest; secured (note A)		$ 290,865.48	
Less current maturities		15,663.84	275,201.64
CAPITAL			
Contributed capital:			
Common stocks, authorized 100,000 shares of $10.00 par value; issued and outstanding 41,447 shares	$414,470.00		
Capital contributed in excess of par value of stock	50,129.00		
Contributed capital arising from liquidation of subsidiary	6,364.64		
Excess of stated amount of stock dividend over par value	225,212.75	$ 696,176.39	
Retained earnings:			
Unappropriated		2,360,146.52	3,056,322.91
			$4,166,439.83

STATEMENT OF INCOME

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

Net profit from operations:			
Furniture			$ 60,749.77
Stationery			58,909.71
Drafting and engineering			16,820.07
Quick-copy			32,072.49
Printing			102,139.06
60 Peachtree			52,966.40
TOTAL NET PROFIT FROM OPERATIONS			$323,657.50
Other income:			
Discount earned		$ 97,127.74	
Interest earned		9,037.35	
Dividends received		60,457.48	
Bad debt recoveries		5,660.46	
Rent income:			
972 Marietta Street	$12,000.00		
56 Pryor Street	13,164.52		
660 Forrest Road	19,800.00		
1740 Peachtree Street	43,541.63		
221 Ivy Street	67,458.00	155,964.15	
Profit on sale of assets		255,920.98	
Vendor's compensation, sales tax		2,597.84	586,766.00
			$910,423.50
Other deductions:			
Interest expense		$ 23,499.01	
Rental property expense:			
Rent paid	$14,199.96		
Commissions	2,704.66		
Taxes	22,399.69		
Insurance	1,858.32		
Depreciation	46,047.46		
Repairs, building	18,420.49	105,630.58	
Life insurance, officers, net		(1,700.51)	
Pensions		2,540.50	
Sundry		109.83	130,079.41
NET INCOME BEFORE PENSION CONTRIBUTIONS			$780,344.09
Profit sharing pension contribution			70,000.00
NET INCOME BEFORE INCOME TAXES			$710,344.09
Income taxes, estimated:			
Federal		$233,758.83	
State		26,083.43	259,842.26
NET INCOME			$450,501.83

DEPARTMENTAL STATEMENT OF OPERATIONS

IVAN ALLEN COMPANY - ATLANTA, GEORGIA

Year ended June 30, 1966

	Furniture	Stationery	Drafting and engineering
Sales	$2,374,999.20	$2,046,402.77	$910,206.61
Freight on sales, net	(186.40)	2,884.81	532.64
	$2,374,812.80	$2,049,287.58	$910,739.25
Cost of sales:			
Inventory, June 30, 1965	$ 161,456.95	$ 181,089.62	$ 96,319.85
Purchases, finished goods	1,814,890.87	1,334,173.72	721,085.01
Freight in	50,044.92	25,233.64	17,830.52
Cost of goods manufactured	-	-	-
	$2,026,392.74	$1,540,496.98	$835,235.38
Less inventory, June 30, 1966	212,037.74	192,513.56	110,648.65
COST OF SALES	$1,814,355.00	$1,347,983.42	$724,586.73
GROSS PROFIT	$ 560,457.80	$ 701,304.16	$186,152.52
Expenses:			
Selling	$ 289,236.08	$ 328,684.03	$114,743.44
Warehouse and delivery	101,805.43	155,424.57	20,113.77
Administrative	154,308.34	207,722.77	59,349.36
	$ 545,349.85	$ 691,831.37	$194,206.57
	$ 15,107.95	$ 9,472.79	$ (8,054.05)
Profit on special sales	9,963.65	(815.37)	226.01
Charges to subsidiaries	35,678.17	50,252.29	24,648.11
NET PROFIT FROM OPERATIONS	$ 60,749.77	$ 58,909.71	$ 16,820.07

Quick-copy	Printing	60 Peachtree	Total
$316,700.17	$1,764,624.78	$306,049.08	$7,718,982.61
(61.56)	(6,726.91)	(52.01)	(3,609.43)
$316,638.61	$1,757,897.87	$305,997.07	$7,715,373.18
$ 3,823.66	$ 36,666.16	$ 19,203.95	$ 498,560.19
-	93,413.15	170,474.53	4,134,037.28
-	194.15	393.40	93,696.63
180,898.59	1,143,862.60	-	1,324,761.19
$184,722.25	$1,274,136.06	$190,071.88	$6,051,055.29
6,445.42	44,119.57	20,175.68	585,940.62
$178,276.83	$1,230,016.49	$169,896.20	$5,465,114.67
$138,361.78	$ 527,881.38	$136,100.87	$2,250,258.51
$ 63,082.79	$ 265,261.66	$ 55,209.48	$1,116,217.48
7,596.88	23,977.12	22,224.99	331,142.76
35,609.62	136,503.54	5,700.00	599,193.63
$106,289.29	$ 425,742.32	$ 83,134.47	$2,046,553.87
$ 32,072.49	$ 102,139.06	$ 52,966.40	$ 203,704.64
-	-	-	9,374.29
-	-	-	110,578.57
$ 32,072.49	$ 102,139.06	$ 52,966.40	$ 323,657.50

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Title Omitted in Printing)

ORDER

(Filed October 6, 1972)

This is a tax refund suit brought by Ivan Allen Company, a Georgia corporation engaged in the office supply and equipment business, to recover federal income and accumulated earnings taxes that it contends were erroneously assessed and collected by the Internal Revenue Service [hereinafter the IRS]. According to a stipulation submitted jointly by the parties, the sole issue presently before the Court concerns the proper interpretation and application of the accumulated earnings tax provisions of the Internal Revenue Code [hereinafter the IRC].

The accumulated earnings tax[1] is a penalty tax imposed on a corporation which has been used to avoid per-

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1. Sections 53-533 of the Internal Revenue Code of 1954 provide:

SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27 1/2 percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38 1/2 percent of the accumulated taxable income in excess of $100,000.

* * *

SEC. 532. CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.

(a) General Rule.—The accumulated earnings tax imposed by Section 531 shall apply to every corporation (other

sonal income taxes[2] on its shareholders by permitting its earnings and profits to accumulate beyond the reasonable needs of its business rather than being divided or distributed. Ivan Allen Company accumulated retained earnings and invested them in marketable securities. The question before the Court is whether these marketable securities should be accounted for at cost, as the taxpayer contends, or at fair market value (less the cost of converting them into cash), as the government contends, for determining the applicability of the accumulated earnings tax.[3] The government admits that if the Court decides the securities should be accounted for at their cost, the taxpayer's undistributed earnings and profits were not permitted to accumulate beyond the reasonable needs of the taxpayer's

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than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

* * *

SEC 533. EVIDENCE OF PURPOSE TO AVOID INCOME TAX.

(a) *Unreasonable Accumulation Determinative of Purpose.*—For purposes of section 532, the fact that the eanings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

* * *

2. Tax avoidance is possible due to the disparity in tax rates for individuals versus corporations.

3. The precise technical legal question presented to the Court is:

"Whether, in determining the amount of the taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should properly be taken into account at their cost, as the taxpayer contends, or at their fair market value (less the cost of converting them into cash), as the government contends." [Stipulation filed jointly by the parties, p. 5, #15, June 12, 1972]

business and the full amount of accumulated earnings tax collected must be refunded.

After careful consideration of the accounting principles and tax policies involved, the Court rules for the taxpayer and holds that when computing the taxpayer's net liquid assets for the purpose of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should be valued at their cost.[4]

While the Court is aware of Tax Court decisions which have reached a contrary result,[5] the Court agrees with and prefers to apply the excellent reasoning of Judge Miller in *American Trading and Production Corporation* v. *United States* [Civil No. 70-1266-M (D. Md., May 10, 1972), 29 Am. Fed. Tax. R.2d ¶72-643]. Neither the statute[6] nor the relevant Treasury Regulations[7] suggest that the unrealized appreciation of a corporation's assets should be taken into account for purposes of the accumulated earnings tax. To force a corporate taxpayer to sell part of its retained earnings investment portfolio in order to avoid an accumulated earnings tax because the investments increased in value since purchase is inconsistent not only with sound tax accounting principles but also with better business judgment. Normally, gains are not recognized un-

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4. The Court specifically limits this decision to value the securities at their cost to situations where the fair market value of the securities is *greater* than cost. The Court in no way implies that marketable securities should be valued at their cost when fair market value is *lower* than cost. That is an entirely different situation which may involve a more complex analysis and different accounting principles.

5. *Golconda Mining Corporation*, 58 T.C. No. 74 (1972); *Henry Van Hummel, Inc.* v. *Commissioner*, 23 T.C.M. 1765 (1964), *aff'd*, 364 F.2d 746 (10th Cir. 1966).

6. Internal Revenue Code § 531, *et seq.*

7. Treasury Regulations §§ 1.537-1, 1.535-3(b)(1)(ii), 1.533-1(a)(2).

til realized and in this case the proper value of the securities, until they are converted into cash, is their cost. Corporate taxpayers should not be penalized for wise investments; they should be allowed to maximize their capital gains tax advantages in accordance with internal business policies and stock market conditions rather than being forced to sell securities which may have a high value[8] on an arbitrarily selected date merely because the unrealized fair market value of the securities on that date would trigger the accumulated earnings tax. The value of a particular stock would depend upon a wide array of imponderables relating principally to the condition of the company whose stock was held, and the myriad of factors that affect the stock market itself—such as whether Henry Kissinger should go to Paris on December 30th—all far beyond the control of the company holding the investment. Adoption of the government's position would require businessmen to employ persons specializing in crystal ball gazing rather than sound business management.

Accordingly, the government is ordered to refund all accumulated earnings taxes, including interest thereon, collected for the taxpayer's fiscal years ended June 30, 1965, and June 30, 1966.

SO ORDERED, this 6 day of October, 1972.

/s/ Charles A. Moye, Jr.
United States District Judge

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8. A situation which might not have been true a month or even a day before that arbitrarily selected date.

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Title Omitted in Printing)

JUDGMENT

(Filed May 3, 1973)

Upon review of the record herein, it appears that—

1. All the issues joined by the parties hereto were as follows:

(a) Whether the plaintiff retained its earnings and profits for one or more of its taxable years ended June 30, 1965, and June 30, 1966 ("taxable years"), beyond the reasonable and reasonably anticipated needs of its business;

(b) Whether, in determining the amount of the plaintiff's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the plaintiff's marketable securities should properly be taken into account at their cost, as the plaintiff contends, or at their fair market value (less the cost of converting them into cash), as the defendant contends;

(c) If the plaintiff retained its earnings and profits beyond the reasonable and reasonably anticipated needs of its business for one or more of the taxable years, whether one of its purposes in so doing was the avoidance of income tax with respect to its shareholders;

(d) Whether interest on accumulated earnings taxes was lawfully assessed against and collected from

the plaintiff by the defendant for the periods from the due dates of the plaintiff's federal income tax returns to the date which occurred ten days after the notice and demand date for payment of such taxes; and

(e) Whether $12,525.16 and $15,025.08 which the plaintiff paid in each of the taxable years to Messrs. Ivan Allen, Sr., and Ivan Allen, Jr., respectively, constituted as to each a reasonable allowance for salary or other compensation for personal services actually rendered.

2. The parties have stipulated that the answer to Issue (a) above would be in the negative and in the plaintiff's favor in the event Issue (b) is resolved in accordance with the contention of the plaintiff as stated in said Issue (b).

3. The Court resolved Issue (b) in accordance with the plaintiff's contention and on October 6, 1972, ordered the defendant "to refund all accumulated earnings taxes, including interest thereon, collected for the taxpayer's fiscal years ended June 30, 1965, and June 30, 1966."

4. In view of the Court's Order of October 6, 1972, a resolution of Issue (c) above is not required.

5. The defendant has refunded to the plaintiff the interest with which Issue (d) above is concerned, together with interest thereon as provided by law, and the parties have stipulated that said issue should be dismissed with prejudice, each side to bear its own costs with respect thereto. On October 26, 1972, the Court so ordered.

6. Issue (e) above, sometimes referred to herein as "the salary issue," has been resolved on the basis of a settlement agreement of the parties and the parties have stipulated that such issue should be dismissed with prej-

udice, each side to bear its own costs with respect thereto. On May 3 (M), 1973, the Court so ordered.

7. All the issues herein have been resolved on the basis of action of the parties and the Order of the Court. Thus, in view of the foregoing, the plaintiff is entitled to recover from the defendant the accumulated earnings tax assessed against and collected from it by the defendant for the taxable years involved herein. Accordingly—

It is ORDERED and ADJUDGED

1. That the plaintiff, Ivan Allen Company, recover from the defendant, the United States of America, the sum of $150,515.85 in accumulated earnings tax paid to the defendant for the taxable years ended June 30, 1965, and June 30, 1966, plus interest thereon as provided by law, and

2. That the plaintiff, Ivan Allen Company, recover its taxable costs from the defendant, the United States of America, to the extent such costs are attributable to the issue relating to the accumulated earnings tax involved.

Dated at Atlanta, Georgia, this the 3 day of May, 1973.

Approved:

Charles A. Moye, Jr.
United States District Judge

Ben H. Carter
Clerk of Court
By: /s/ Peggy L. Edmunds
Deputy Clerk

Approved as to Form:

/s/ Kirk McAlpin
Counsel for Plaintiff

/s/ Jack D. Warren
Counsel for Defendant

IVAN ALLEN COMPANY, Plaintiff-Appellee,

v.

UNITED STATES of America, Defendant-Appellant.

No. 73-2866.

United States Court of Appeals,

Fifth Circuit.

May 3, 1974.

In proceedings concerning propriety of application of accumulated earnings tax penalty, the United States District Court for the Northern District of Georgia, at Atlanta, Charles A. Moye, Jr., J., 349 F.Supp. 1075, concluded that securities purchased by a corporation should be valued at original cost for purposes of determining whether the corporation had accumulated excess earnings. The government appealed. The Court of Appeals, Ingraham, Circuit Judge, held that the proper valuation of the securities was their fair market value less the expense of their conversion into cash, and remanded the case for a determination as to whether one of the purposes for the accumulation had been to avoid income tax on behalf of the shareholders.

Reversed and remanded.

Internal Revenue (Key) 763.1

For purposes of determining whether corporation had accumulated excess earnings, correct evaluation for substantially appreciated securities held by corporation was fair market value less expense of conversion into cash, not original cost to corporation. 26 U.S.C.A. (I.R.C.1954), §§ 531, 532, 533(a).

Appeal from the United States District Court for the Northern District of Georgia.

Before GODBOLD, SIMPSON and INGRAHAM, Circuit Judges.

INGRAHAM, Circuit Judge:

The issue on this appeal concerns the standard for measuring the amount of a corporation's liquid assets in determining the applicability of the tax imposed upon a corporation for not distributing to its shareholders the earnings and profits that exceed its reasonable business needs.[1] More specifically, we must decide whether securities, which have appreciated substantially in value, should be measured by their original cost to the corporate taxpayer, or at the fair market value less the expense of conversion into cash. The district court held for taxpayer Ivan Allen Company, concluding that liquid assets would be measured at their original cost. Ivan Allen Co. v. United States, 349 F.Supp. 1075 (N.D.Ga., 1972). We do not agree with the district court's disposition of this case and therefore reverse.

The stipulated facts demonstrate that since 1902 Ivan Allen Company, a Georgia corporation, has sold office machinery and supplies in and around Atlanta, Georgia. In the late 1950's or early 1960's the corporate management recognized the great potential in Xerox Corp. securities and invested about $218,180 in them. Ivan Allen obviously made a wise investment because, since the purchase of the securities, their value has increased about ten times the original cost. It is the substantial appreciation of this stock that gives rise to the present controversy.

The district court, recognizing the varying standards adopted by the courts for measuring the amount of a

1. Section 531 of the Internal Revenue Code imposes the accumulated earnings tax on any corporation that, according to § 532, is "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." 26 U.S.C. §§ 531, 532.

corporation's liquid assets,[2] concluded that the proper standard was the original cost to the corporation rather than the fair market value. The parties' stipulations, in view of the court's determination, dictated the conclusion that Ivan Allen Co. had not unreasonably accumulated earnings or profits.

The Supreme Court in Helvering v. National Grocery Co., 304 U.S. 282, 58 S.Ct. 932, 82 L.Ed. 1346 (1938), stated that, when determining whether a corporation has withheld earnings in excess of reasonable business needs, "[d]epreciation in any of the assets is evidence to be considered . . . ." *Id.* at 291. Implicit in the *National Grocery* decision is the Court's concern with the actual financial status of the corporation and its ability to meet business needs from available resources. Liquidation of depreciated

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2. Based on facts similar to those in the case at hand, the Tax Court in Golconda Mining Corp. v. Comm'r, 58 T.C. 139 (1972), supp. opin. 58 T.C. 736 (1972), reached a result contrary to that of the district court. Our decision today brings this court in line with the *Golconda* decision. *Golconda* is currently on appeal to the Ninth Circuit. Also consistent with *Golconda* is the case of Henry Van Hummel, Inc. v. Comm'r, P-8 Memo T.C. ¶ 64,290 (1964), aff'd 364 F.2d 746 (10th Cir., 1966), cert. den. 386 U.S. 956, 87 S.Ct. 1019, 18 L.Ed.2d 102 (1967).

There are two decisions that offer support for the district court's conclusion. American Trading & Prod. Corp. v. United States, 362 F.Supp. 801 (D.Md. 1972), aff'd 474 F.2d 1341 (4th Cir., 1973); Harry A. Koch Co. v. Vinal, 228 F.Supp. 782 (D.Neb., 1964). Arguably, the *American Trading* decision, on which the district court heavily relied, is not inconsistent with our conclusion in the instant case. In *American Trading* the corporation, like in the case at hand, had purchased securities that had appreciated substantially in value. The court held that, despite the substantial appreciation in liquid assets, this appreciation was not earnings or profits within the meaning of § 531 because it was derived from the corporation's original capital. Also, because of additional circumstances such as insider trading limitations, the securities were not as liquid as they might be under ordinary circumstances, and therefore were not readily available to meet the corporation's business needs. *See* Comment, Accumulated Earnings Tax: Should Marketable Securities be Valued at Cost or at Fair Market Value in Determining the Reasonableness of Further Accumulations of Income? 40 Brooklyn L.Rev. 192 (1973).

assets may not produce adequate funds to meet needs arising in the course of business.

Unlike *National Grocery*, the liquid assets in the case at hand have appreciated in value rather than depreciated, but the underlying principle is still applicable. Because the liquid assets can be easily converted into cash, the appreciated value of the securities is readily available to meet the business needs of the corporation as they arise. To accurately determine Ivan Allen's ability to meet business needs from its available resources, the appreciated value of the securities must be taken into account. As unrealized depreciation of liquid assets is considered in determining whether a corporation has unreasonably accumulated profits, unrealized appreciation likewise must be considered.

We are supported in this conclusion by our decision in Battelstein Investment Co. v. United States, 442 F.2d 87 (5th Cir., 1971). The taxpayer in *Battelstein* had sold real estate and received in return a partial initial cash payment and a long term note for the unpaid balance. Holding that the discounted value of the note, although yet unrealized gain, should be considered in determining whether the corporation had unreasonably accumulated profits, Chief Judge Brown stated:

> "Looking ahead—as the concept of reasonable accumulating contemplates—Taxpayer, as it surveyed the future at FY 1963's end, could not ignore this rich resource. This bluechip note effectually secured by gilt-edged Houston land was then worth not less than the discounted value. Granted that for income tax purposes the deferred payments did not constitute 'income' or 'earnings' for FY 1963 the discounted value of this highly liquid asset had to be reckoned with

in weighing foreseeable, planned (i) needs against (ii) available resources at the time of need."

Id. at 89. Like the note in *Battelstein*, the securities involved in the case at bar are of such a highly liquid character as to be readily available for business needs that might arise. Thus the appreciated value of these securities should be taken into account when determining whether the corporation has accumulated profits in excess of reasonable business needs.

We are not persuaded by taxpayer's argument that our conclusion to take into account the appreciation of the securities is inconsistent with sound business practices. Because of the day to day fluctuation of the stock market, taxpayer argues, the appreciation of the securities is not truly an available resource for meeting business needs. But while it is true that the stock market is highly unpredictable, we still believe that the fair market value is a closer approximation of available resources than simply the historical cost.

Nor do we think that our decision imposes undue limitations on the exercise of the corporation's sound business judgment in the conduct of its financial affairs. In no way do we attempt to dictate any point in time when appreciated assets are to be sold, exchanged or distributed to the shareholders. This decision does not force the corporation to liquidate these securities at any time when a sale would be financially unwise, but only compels the corporation to comply with the proscriptions of the Code and refrain from accumulating excessive earnings and profits. That taxpayer, as a consequence of its own sound judgment in making profitable investments, must sell, exchange or distribute to the shareholders assets in order to avoid an excessive accumulation of earnings and thus

comply with the Code's requirements is no justification for precluding its application.

Having concluded that the proper standard for determining the amount of taxpayer's liquid assets is the fair market value less the expense of converting them into cash, we reverse and remand for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders.[3]

---

3. Section 533(a) of the Code provides in part that "the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by a preponderance of the evidence shall prove to the contrary." 26 U.S.C. § 533(a). It has been stipulated that, if the measure for determining the amount of liquid assets is the original cost to the corporation, then the corporation has not unreasonably accumulated earnings. If, however, the measure is determined to be the fair market value less the cost of conversion, then the corporation has accumulated excessive earnings. Because we conclude that the proper measure is the fair market value of the securities, we must remand for additional evidence to see if the taxpayer can prove that the accumulation was not for the purpose of avoiding income tax.

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

October Term, 1973

No. 73-2866

D. C. Docket No. CA 15130

IVAN ALLEN COMPANY,
Plaintiff-Appellee,

versus

UNITED STATES OF AMERICA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

---

Before GODBOLD, SIMPSON and INGRAHAM, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same

is hereby remanded to the said District Court for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders in accordance with the opinion of this Court;

It is further ordered that plaintiff-appellee pay to defendant-appellant, the costs on appeal to be taxed by the Clerk of this Court.

May 3, 1974

Issued as Mandate:

JUL 26 1974
MICHAEL RODAK, JR., C

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-22

IVAN ALLEN COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. _____

IVAN ALLEN COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Ivan Allen Company respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on May 3, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 493 F.2d 426 (5th Cir. 1974), appears in Appendix I hereto. The opinion of the United States District Court for the Northern District of Georgia is reported at 349 F.Supp. 1075, and a copy thereof is included in Appendix II.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 3, 1974, and this petition for certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether, in determining the amount of the Taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of section 533(a) of the Internal Revenue Code of 1954, the Taxpayer's marketable securities should properly be taken into account at their cost, as the Taxpayer contends, or at their fair market value (less the cost of converting them into cash), as the Government contends.

STATUTORY PROVISIONS INVOLVED

INTERNAL REVENUE CODE of 1954, as amended, United States Code, Title 26:

"§531. *Imposition of accumulated earnings tax.*

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27 1/2 percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38 1/2 percent of the accumulated taxable income in excess of $100,000.

"§532. *Corporations subject to accumulated earnings tax.*

(a) *General rule.*

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other

corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

* * *

"§533. *Evidence of purpose to avoid income tax.*

(a) *Unreasonable accumulation determinative of purpose.*

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary."

* * *

STATEMENT OF THE CASE

This is a tax refund suit involving the application of sections 531-537 of the Internal Revenue Code of 1954, as amended, which impose a penalty tax on corporations "formed or availed of for the purpose of avoiding the income tax with respect to . . . [their] shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." Petitioner filed the instant civil action on the ground that accumulated earnings taxes and interest were erroneously and illegally assessed against and collected from it for its taxable years ended June 30, 1965 and June 30, 1966.

Petitioner (hereinafter referred to as "Taxpayer") is an active operating company engaged in the business of selling office supplies and equipment in the metropolitan area of Atlanta, Georgia. As of the last day of each of the taxable years in question, Taxpayer held certain marketable securities. These securities, however, repre-

sented an investment of less than seven percent of Taxpayer's total undistributed earnings and constituted less than five percent of Taxpayer's total assets for each of the years in question, as shown by the following table:

Year Ended	Earnings and Profits Invested in Securities	Total Earnings and Profits	Total Assets
6/30/65	$154,222	$2,200,184.77	$3,717,835.18
6/30/66	$135,754	$2,360,146.52	$4,166,439.83

This litigation is attributable solely to Taxpayer's relatively small investment of a portion of its earnings and profits in marketable securities of a single corporation—Xerox Corporation. As of June 30, 1965, Taxpayer had invested $116,701 of its undistributed earnings and profits in Xerox common stock and $30,625 in convertible debentures issued by that corporation. The stock market quotations on the same day showed Xerox common stock trading at a price that reflected unrealized appreciation in the "value" of Taxpayer's invested earnings and profits of $1,474,623 (market value of $1,621,949 less cost of $147,326). Similarly, at the close of its taxable year 1966, Taxpayer's $133,104 of undistributed earnings and profits invested in Xerox securities appeared to have an unrealized paper appreciation of $2,416,281 (market value of $2,549,385 less cost of $133,104).

On the basis of these undisputed facts, the parties entered into a stipulation in the District Court for purposes of determining the legal issue of the applicability of the tax avoidance presumption provided in section 533(a). In this regard it was stipulated that Taxpayer had a need for operating capital to finance legitimate business operations in the amount of $1,198,309 at the close of its taxable year 1965 and in the amount of $1,455,222 at the close of its taxable year 1966. The stipulation further provided

that if Taxpayer's marketable securities are "taken into account" for purposes of section 533(a) at their "cost," which is the extent to which such securities represent an investment of Taxpayer's earnings and profits, then Taxpayer's net liquid assets exactly equaled its business needs. Accordingly, the government conceded, both in the District Court and on appeal, that if "cost," i.e., earnings and profits, is the standard against which business needs are to be measured, then Taxpayer was justified in retaining a portion of its earnings for its taxable years 1965 and 1966 to meet its business needs and that the accumulated earnings tax was erroneously and illegally assessed against and collected from Taxpayer. If, on the other hand, Taxpayer's investments are required to be taken into account on the basis of their net liquidation value (fair market value less cost of conversion into cash), then Taxpayer conceded that it was subject to the section 533(a) tax avoidance presumption for both its taxable years 1965 and 1966.

The District Court resolved this legal issue in favor of Taxpayer, holding that neither the statute nor any Treasury Regulation required that a taxpayer finance current operations out of unrealized appreciation in the value of its assets, as opposed to earnings and profits. In so holding, the District Court followed the holding of the Maryland District Court in *American Trading & Production Corp.* v. *United States,* 362 F.Supp. 801 (D.Md. 1972), later affirmed by the Fourth Circuit, 474 F.2d 1341 (4th Cir. 1973).

On appeal, the Fifth Circuit reversed the judgment entered in Taxpayer's favor, holding that appreciated assets must be accounted for at their liquidation value as of the last day of the taxable year for purposes of determining the applicability of the section 533(a) tax avoidance presumption.

REASONS FOR GRANTING THE WRIT

1. The Decision of the Fifth Circuit Conflicts in Principle with the Decision of the Fourth Circuit in American Trading & Production Corp. v. United States.

Section 531 of the Internal Revenue Code of 1954 imposes a penalty tax on every corporation "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed," and by virtue of section 533(a), such a tax avoidance purpose is presumed if a corporation "permits its earnings and profits to accumulate beyond the reasonable needs of the business."

Although both the statute and the Treasury Regulations make reference exclusively to "earnings and profits," the Fifth Circuit nevertheless concluded in the instant case that the unrealized appreciation in a corporation's assets must be added to earnings and profits in determining the applicability of the section 531 penalty tax. In so holding, the Fifth Circuit noted that the District Court's contrary conclusion was "supported" by *American Trading & Production Corp.* v. *United States*, 362 F.Supp. 801 (D.Md. 1972), *aff'd*, 474 F.2d 1341 (4th Cir. 1973). In *American Trading*, the Fourth Circuit affirmed a decision of the Maryland District Court for the "reasons sufficiently stated in the opinion of the District Court," and thereby adopted the opinion of the District Court.[1]

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1. The Fourth Circuit's affirmance of the District Court opinion in *American Trading* is not reported. For this reason, the full text of the Fourth Circuit's per curiam decision is included in Appendix III.

The taxpayer in *American Trading* had total accumulated earnings and profits in the range of $10 million. 362 F.Supp. at 807. In addition, it held marketable securities having a fair market value in excess of $100 million and had demonstrated business needs of approximately one-tenth of that amount. 362 F.Supp. at 809. As in the instant case, the taxpayer's marketable securities in *American Trading* had exhibited substantial unrealized appreciation in value as measured by current stock market quotations.

For all practical purposes, the question presented by *American Trading* was the same as that presented by the instant case—is a taxpayer required by the section 531 penalty tax to finance current business needs out of unrealized appreciation in the value of its assets, as opposed to financing such needs out of earnings and profits.

In *American Trading* the Court confronted this issue squarely and held as follows:

> "[T]he purpose of the Internal Revenue Code Sections in issue, in this Court's view, relates to *earnings and profits* and the size thereof, if any, and not to original capital and the size or growth thereof.
>
> * * *
>
> "Essentially, what has happened is that the original capital in the form of which it is now held has explosively increased in value, but that fact alone is not sufficient in this court's view to require the liquidation of any part of that capital to meet current business needs in order to avoid a Section 531 tax.
>
> * * *
>
> "This Court does not believe the law requires or allows the Court to say to the taxpayer that it must directly utilize for borrowing the other one-half [of

> its appreciated assets], rather than part of the earnings and profits of any year in order to escape Section 531 tax." 362 F.Supp. at 808-809.

It was this rationale and principle of law with which the District Court agreed and relied upon in the instant case, but which the Fifth Circuit rejected.

It has been suggested that the holding of *American Trading* is distinguishable from the instant case in that the appreciated property held by the taxpayer in *American Trading* was "original capital." Taxpayer respectfully submits, however, that this factor has no independent significance, either legally or as a matter of practical business judgment. If the sole test of applicability of the section 533(a) tax avoidance presumption is corporate liquidity, as the Fifth Circuit says, then appreciated property originally acquired by means of a capital contribution contributes just as much to that liquidity as appreciated property subsequently acquired by a minor investment of earnings and profits. Indeed, in *Golconda Mining Corp.*, 58 T.C. 736 (1972), on appeal (9th Cir. Appeals Nos. 72-3202, 73-1161 and 73-1162), which involved the precise issue presented by the instant case, the Tax Court, although it agreed with the government's position, recognized that there was no distinction between unrealized appreciation in assets contributed to a corporation as part of its original capital and unrealized appreciation in liquid assets obtained by an investment of earnings and profits. In effect, the Tax Court in *Golconda* did not purport to distinguish *American Trading* on any ground whatsoever but simply recognized that its decision was in fundamental conflict with the *American Trading* decision. Taxpayer understands that the *Golconda* case, which was relied upon by the Fifth Circuit in the instant case, has been orally argued in the Ninth Circuit and is awaiting decision.

Under the Tax Court's rule of following the decision of the Circuit to which appeal will lie, *Jack E. Golsen*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir.), *cert. denied*, 404 U.S. 940 (1971), the Tax Court, in cases where appeal will lie to the Fourth Circuit, as well as all District Courts within the Fourth Circuit, will follow the holding of *American Trading*. Meanwhile, taxpayers in the Fifth Circuit will be restricted and required to govern their business decisions by the Fifth Circuit's decision in the instant case.

In view of the immediate impact of the Fifth Circuit's decision upon practical and important business decisions of taxpayers in that Circuit as well as the unfairness of a different standard being applied to Fourth Circuit taxpayers similarly situated, Taxpayer respectfully submits that this conflict justifies the grant of certiorari to review the judgment below.

2. The Fifth Circuit's Decision Raises Important and Recurring Problems in Judicial and Administrative Application of the Section 531 Penalty Tax.

The manner in which a taxpayer's liquid assets are to be taken into account for purposes of determining the applicability of the section 533(a) presumption is a substantial and frequently recurring issue, the resolution of which is crucial to the administration of the accumulated earnings tax. Even before this Court's decision in *United States* v. *Donruss Co.*, 393 U.S. 297 (1969), and certainly since that decision, litigation involving the accumulated earnings tax has focused almost exclusively upon the issue of whether an unreasonable accumulation of earnings exists. This shift in focus has effectuated the policy of Congress, as interpreted by this Court, by emphasizing an "objective inquiry" that is "susceptible of more effective scrutiny,

than are the vagaries of corporate motive." 393 U.S. at 307. Thus, when a taxpayer can demonstrate that its business needs exceed its accumulated earnings and profits, the government has ordinarily conceded or suffered defeat. *See, e.g., Electric Regulator Corp.* v. *Commissioner*, 336 F.2d 339 (2d Cir. 1964); *R. Gsell & Co., Inc.* v. *Commissioner*, 294 F.2d 321 (2d Cir. 1961); *John P. Scripps Newspapers*, 44 T.C. 453 (1965). Conversely, when an accumulation of earnings has been found to be unreasonable, taxpayers have rarely succeeded in rebutting the inference that tax avoidance was the motive for the accumulation. *See, e.g., I. A. Dress Co., Inc.* v. *Commissioner*, 273 F.2d 543 (2d Cir. 1960); *Ted Bates & Co., Inc.*, 24 T.C.M. 1346 (1965).

Because of the dominant role that the section 533(a) presumption has assumed in the administration of the accumulated earnings tax, the instant case, which presents a recurring issue in determining the applicability of the presumption, is of utmost importance. Indeed, Taxpayer is aware of two pending cases which involve precisely the same issue presented by the instant case. *Golconda Mining Corp.*, 58 T.C. 736 (1972), on appeal (9th Cir. Appeals Nos. 72-3202, 73-1161 and 73-1162); *Space Center Incorporated*, Tax Court Case No. 1325-73. In addition, there have been numerous cases in which the issue presented by the instant case has been presented and decided both with and without discussion as well as a number of cases in which the issue has been presented but its resolution was not necessary to the decision in the case. See Appendix IV.

In short, both taxpayers and the government, as well as the lower courts, urgently need a resolution of the issue presented by the instant case, for the Fifth Circuit's

resolution of the issue not only departs from the clear purpose of the accumulated earnings tax but also presents practical problems in the administration of the tax.

By its plain terms, the applicability of the section 533(a) presumption is dependent upon a comparison of a corporation's accumulated earnings and profits with its reasonable business needs. The question presented by the instant case turns on the first half of this equation and more particularly on the appropriate method by which the amount of a taxpayer's accumulated earnings and profits available to meet its business needs should be determined. Since the Fourth Circuit's decision in *Smoot Sand & Gravel Corp.* v. *Commissioner*, 274 F.2d 495 (4th Cir.), *cert. denied*, 362 U.S. 976 (1960), this determination has been made by calculating the amount of a taxpayer's earnings and profits invested in liquid assets unrelated to the corporation's trade or business. Such a calculation quite properly recognizes that to the extent that a taxpayer has invested its accumulated earnings in liquid assets unrelated to its business, its earnings are available either to meet its business needs or for distribution as dividends to its shareholders.

The Fifth Circuit, however, has concluded that the amount of a taxpayer's accumulated earnings and profits available to meet its business needs should be determined by calculating the fair market value of the taxpayer's liquid assets rather than the accumulated earnings invested in such assets. In so holding, the Fifth Circuit has adopted a standard that deviates from the clear congressional purpose of penalizing a taxpayer solely for unreasonably accumulating its *earnings and profits*. This purpose is manifested not only in the operative provisions of the tax, all of which are structured around a taxpayer's accumula-

tion of earnings and profits,[2] but also in the legislative history of the tax.[3] Indeed, it is in recognition of this purpose that Treasury Regulation §1.535-3(b)(1)(ii) omits any reference to the unrealized appreciation in a corporation's assets and provides simply that in determining whether earnings and profits have been accumulated beyond the reasonable needs of the business, "*the accumulated earnings and profits of the prior years* will be taken into consideration." *See also*, Treas. Reg. §§1.533-1(a)(1), 1.533-1(b), and 1.537-2.

The Fifth Circuit, however, by requiring that a corporation's liquid assets be taken into account at their fair market value, has reached a conclusion that will make the application of the section 531 penalty tax turn on the market value of a corporation's liquid assets as of the last day of its taxable year without regard to the size and nature of the corporation's accumulation of earnings. Such a result, which departs from the clear statutory standard of "accumulated earnings and profits" and substitutes a standard dependent upon the state of the local, national and world economic and political situations as

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2. *See, e.g.*, section 532 (tax applies to every corporation permitting its *earnings and profits* to accumulate for the tax avoidance purpose); section 533 (presumption of tax avoidance applies if *earnings and profits* are permitted to accumulate beyond the reasonable needs of the business); section 535(c)(1) (a credit allowed against accumulated taxable income for *earnings and profits* retained for the reasonable needs of the business); section 535(c)(2) (a minimum credit allowed against accumulated taxable income for $100,000 of *earnings and profits*).

3. S. Rep. No. 1567, 75th Cong., 3d Sess. 5 (1938) (stating that the purpose of the section 533(a) presumption is to require a taxpayer to prove the absence of any tax avoidance motive "*after it has been determined that the earnings and profits have been unreasonably accumulated*"); S. Rep. No. 2156, 74th Cong., 2d Sess. 17 (1936) (explaining the 1938 amendment of the statute to substitute the phrase "earnings and profits" for "gains and profits" as more accurately describing "the fund out of which tax dividends are paid").

of a particular day in a corporation's taxable year, was clearly not contemplated by Congress. *Contra, Harry A. Koch Co.* v. *Vinal*, 228 F.Supp. 782 (D.Neb. 1964).

Moreover, the Fifth Circuit's opinion ignores the effect its conclusion will have on the administration of the accumulated earnings tax. If a corporation's investments in assets unrelated to its trade or business consist of stock of closely held corporations or real estate for which there is not a ready market, the applicability of the section 533(a) presumption and thus the corporation's liability for the accumulated earnings tax will turn on complex questions of valuation. Introducing this element into the section 531 penalty tax will not only thrust these questions of valuation upon the judiciary but will also create substantial uncertainty among taxpayers as to their exposure to the tax. Such a result is contrary to the policy set forth in this Court's decision in *United States* v. *Donruss Co.*, 393 U.S. 297 (1969), which placed primary emphasis on readily ascertainable objective criteria as the determining factors in the administration of the tax. Indeed, the standards for determining the applicability of a penalty tax should clearly be more precise than the varying opinions men may have as to the value of a corporation's assets.

Finally, the Fifth Circuit's opinion will have far-reaching and detrimental effects on the exercise of corporate management's business judgment. The opinion requires that a corporation with appreciated liquid assets must take this appreciation into account as a source of funds available to finance its business needs. By so holding, the Fifth Circuit has in effect told corporate management that in order to avoid exposing their corporations to the section 531 penalty tax they must liquidate corporate investments to finance business needs, even though management in

the exercise of its business judgment may feel that its needs should be financed out of current and accumulated earnings. Such a result not only unjustifiably interferes with legitimate corporate business decisions without in any way furthering the purpose of the accumulated earnings tax, but also departs from the well-established principle that a corporation may legitimately finance its business needs and expansion *solely* out of current and accumulated earnings and profits without regard to other available sources of funds. *See, e.g., Duke Laboratories, Inc.* v. *United States*, 337 F.2d 280 (2d Cir. 1964); *Electric Regulator Corp.* v. *Commissioner*, 336 F.2d 339 (2d Cir. 1964); *John P. Scripps Newspapers*, 44 T.C. 453 (1965); *Carolina Rubber Hose Co.*, 24 T.C.M. 1159 (1965); *General Smelting Co.*, 4 T.C. 313 (1944).

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1973

No. 73-2866

D. C. Docket No. CA 15130

IVAN ALLEN COMPANY,
Plaintiff-Appellee,

versus

UNITED STATES OF AMERICA,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

Before GODBOLD, SIMPSON and INGRAHAM,
Circuit Judges.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders in accordance with the opinion of this Court;

It is further ordered that plaintiff-appellee pay to defendant-appellant, the costs on appeal to be taxed by the Clerk of this Court.

May 3, 1974

Issued as Mandate:

IVAN ALLEN COMPANY, Plaintiff-Appellee,

v.

UNITED STATES of America, Defendant-Appellant.

No. 73-2866.

United States Court of Appeals, Fifth Circuit.

May 3, 1974.

In proceedings concerning propriety of application of accumulated earnings tax penalty, the United States District Court for the Northern District of Georgia, at Atlanta, Charles A. Moye, Jr., J., 349 F.Supp. 1075, concluded that securities purchased by a corporation should be valued at original cost for purposes of determining whether the corporation had accumulated excess earnings. The government appealed. The Court of Appeals, Ingraham, Circuit Judge, held that the proper valuation of the securities was their fair market value less the expense of their conversion into cash, and remanded the case for a determination as to whether one of the purposes for the accumulation had been to avoid income tax on behalf of the shareholders.

Reversed and remanded.

Internal Revenue (Key) 763.1

For purposes of determining whether corporation had accumulated excess earnings, correct evaluation for substantially appreciated securities held by corporation was fair market value less expense of conversion into cash, not original cost to corporation. 26 U.S.C.A. (I.R.C. 1954), §§ 531, 532, 533(a).

Appeal from the United States District Court for the Northern District of Georgia.

Before GODBOLD, SIMPSON and INGRAHAM, Circuit Judges.

INGRAHAM, Circuit Judge:

The issue on this appeal concerns the standard for measuring the amount of a corporation's liquid assets in determining the applicability of the tax imposed upon a corporation for not distributing to its shareholders the earnings and profits that exceed its reasonable business needs.[1] More specifically, we must decide whether securities, which have appreciated substantially in value, should be measured by their original cost to the corporate taxpayer, or at the fair market value less the expense of conversion into cash. The district court held for taxpayer Ivan Allen Company, concluding that liquid assets would be measured at their original cost. Ivan Allen Co. v. United States, 349 F.Supp. 1075 (N.D.Ga., 1972). We do not agree with the district court's disposition of this case and therefore reverse.

The stipulated facts demonstrate that since 1902 Ivan Allen Company, a Georgia corporation, has sold office machinery and supplies in and around Atlanta, Georgia. In the late 1950's or early 1960's the corporate management recognized the great potential in Xerox Corp. securities and invested about $218,180 in them. Ivan Allen obviously made a wise investment because, since the purchase of the securities, their value has increased about ten times

---

1. Section 531 of the Internal Revenue Code imposes the accumulated earnings tax on any corporation that, according to § 532, is "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." 26 U.S.C. §§ 531, 532.

the original cost. It is the substantial appreciation of this stock that gives rise to the present controversy.

The district court, recognizing the varying standards adopted by the courts for measuring the amount of a corporation's liquid assets,[2] concluded that the proper standard was the original cost to the corporation rather than the fair market value. The parties' stipulations, in view of the court's determination, dictated the conclusion that Ivan Allen Co. had not unreasonably accumulated earnings or profits.

The Supreme Court in Helvering v. National Grocery Co., 304 U.S. 282, 58 S.Ct. 932, 82 L.Ed. 1346 (1938), stated that, when determining whether a corporation has withheld earnings in excess of reasonable business needs, "[d]epre-

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2. Based on facts similar to those in the case at hand, the Tax Court in Golconda Mining Corp. v. Comm'r, 58 T.C. 139 (1972), supp. opin. 58 T.C. 736 (1972), reached a result contrary to that of the district court. Our decision today brings this court in line with the *Golconda* decision. *Golconda* is currently on appeal to the Ninth Circuit. Also consistent with *Golconda* is the case of Henry Van Hummell, Inc. v. Comm'r, P-8 Memo T.C. ¶ 64,290 (1964), aff'd 364 F.2d 746 (10th Cir., 1966), cert. den. 386 U.S. 956, 87 S.Ct. 1019, 18 L.Ed.2d 102 (1967).

There are two decisions that offer support for the district court's conclusion. American Trading & Prod. Corp. v. United States, 362 F.Supp. 801 (D.Md.1972), aff'd 474 F.2d 1341 (4th Cir., 1973); Harry A. Koch Co. v. Vinal, 228 F.Supp. 782 (D.Neb., 1964). Arguably, the *American Trading* decision, on which the district court heavily relied, is not inconsistent with our conclusion in the instant case. In *American Trading* the corporation, like in the case at hand, had purchased securities that had appreciated substantially in value. The court held that, despite the substantial appreciation in liquid assets, this appreciation was not earnings or profits within the meaning of § 531 because it was derived from the corporation's original capital. Also, because of additional circumstances such as insider trading limitations, the securities were not as liquid as they might be under ordinary circumstances, and therefore were not readily available to meet the corporation's business needs. *See* Comment, Accumulated Earnings Tax: Should Marketable Securities be Valued at Cost or at Fair Market Value in Determining the Reasonableness of Further Accumulations of Income? 40 Brooklyn L.Rev. 192 (1973).

ciation in any of the assets is evidence to be considered . . . ." *Id.* at 291. Implicit in the *National Grocery* decision is the Court's concern with the actual financial status of the corporation and its ability to meet business needs from available resources. Liquidation of depreciated assets may not produce adequate funds to meet needs arising in the course of business.

Unlike *National Grocery*, the liquid assets in the case at hand have appreciated in value rather than depreciated, but the underlying principle is still applicable. Because the liquid assets can be easily converted into cash, the appreciated value of the securities is readily available to meet the business needs of the corporation as they arise. To accurately determine Ivan Allen's ability to meet business needs from its available resources, the appreciated value of the securities must be taken into account. As unrealized depreciation of liquid assets is considered in determining whether a corporation has unreasonably accumulated profits, unrealized appreciation likewise must be considered.

We are supported in this conclusion by our decision in Battelstein Investment Co. v. United States, 442 F.2d 87 (5th Cir., 1971). The taxpayer in *Battelstein* had sold real estate and received in return a partial initial cash payment and a long term note for the unpaid balance. Holding that the discounted value of the note, although yet unrealized gain, should be considered in determining whether the corporation had unreasonably accumulated profits Chief Judge Brown stated:

> "Looking ahead—as the concept of reasonable accumulating contemplates—Taxpayer, as it surveyed the future at FY 1963's end, could not ignore this rich resource. This bluechip note effectually secured by gilt-edged Houston land was then worth not less

> than the discounted value. Granted that for income tax purposes the deferred payments did not constitute 'income' or 'earnings' for FY 1963 the discounted value of this highly liquid asset had to be reckoned with in weighing foreseeable, planned (i) needs against (ii) available resources at the time of need."

Id. at 89. Like the note in *Battelstein*, the securities involved in the case at bar are of such a highly liquid character as to be readily available for business needs that might arise. Thus the appreciated value of these securities should be taken into account when determining whether the corporation has accumulated profits in excess of reasonable business needs.

We are not persuaded by taxpayer's argument that our conclusion to take into account the appreciation of the securities is inconsistent with sound business practices. Because of the day to day fluctuation of the stock market, taxpayer argues, the appreciation of the securities is not truly an available resource for meeting business needs. But while it is true that the stock market is highly unpredictable, we still believe that the fair market value is a closer approximation of available resources than simply the historical cost.

Nor do we think that our decision imposes undue limitations on the exercise of the corporation's sound business judgment in the conduct of its financial affairs. In no way do we attempt to dictate any point in time when appreciated assets are to be sold, exchanged or distributed to the shareholders. This decision does not force the corporation to liquidate these securities at any time when a sale would be financially unwise, but only compels the corporation to comply with the proscriptions of the Code and refrain from accumulating excessive earnings and prof-

its. That taxpayer, as a consequence of its own sound judgment in making profitable investments, must sell, exchange or distribute to the shareholders assets in order to avoid an excessive accumulation of earnings and thus comply with the Code's requirements is no justification for precluding its application.

Having concluded that the proper standard for determining the amount of taxpayer's liquid assets is the fair market value less the expense of converting them into cash, we reverse and remand for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders.[3]

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3. Section 533(a) of the Code provides in part that "the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by a preponderance of the evidence shall prove to the contrary." 26 U.S.C. § 533(a). It has been stipulated that, if the measure for determining the amount of liquid assets is the original cost to the corporation, then the corporation has not unreasonably accumulated earnings. If, however, the measure is determined to be the fair market value less the cost of conversion, then the corporation has accumulated excessive earnings. Because we conclude that the proper measure is the fair market value of the securities, we must remand for additional evidence to see if the taxpayer can prove that the accumulation was not for the purpose of avoiding income tax.

APPENDIX II

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 15130

IVAN ALLEN COMPANY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

Order

(Filed October 6, 1972)

This is a tax refund suit brought by Ivan Allen Company, a Georgia corporation engaged in the office supply and equipment business, to recover federal income and accumulated earnings taxes that it contends were erroneously assessed and collected by the Internal Revenue Service [hereinafter the IRS]. According to a stipulation submitted jointly by the parties, the sole issue presently before the Court concerns the proper interpretation and application of the accumulated earnings tax provisions of the Internal Revenue Code [hereinafter the IRC].

The accumulated earnings tax[1] is a penalty tax imposed on a corporation which has been used to avoid personal incomes taxes[2] on its shareholders by permitting its earnings and profits to accumulate beyond the reasonable needs of its business rather than being divided or distributed. Ivan Allen Company accumulated retained earn-

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1. Sections 531-533 of the Internal Revenue Code of 1954 provide:

SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27 1/2 percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38 1/2 percent of the accumulated taxable income in excess of $100,000.

* * *

SEC. 532. CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.

(a) General Rule.—The accumulated earnings tax imposed by Section 531 shall apply to every corporation (other than those described in section (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

* * *

SEC. 533. EVIDENCE OF PURPOSE TO AVOID INCOME TAX.

(a) *Unreasonable Accumulation Determinative of Purpose.*—For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

* * *

2. Tax avoidance is possible due to the disparity in tax rates for individuals versus corporations.

ings and invested them in marketable securities. The question before the Court is whether these marketable securities should be accounted for at cost, as the taxpayer contends, or at fair market value (less the cost of converting them into cash), as the government contends, for de-determining the applicability of the accumulated earnings tax.[3] The government admits that if the Court decides the securities should be accounted for at their cost, the taxpayer's undistributed earnings and profits were not permitted to accumulate beyond the reasonable needs of the taxpayer's business and the full amount of accumulated earnings tax collected must be refunded.

After careful consideration of the accounting principles and tax policies involved, the Court rules for the taxpayer and holds that when computing the taxpayer's net liquid assets for the purpose of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954 the taxpayer's marketable securities should be valued at their cost.[4]

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3. The precise technical legal question presented to the Court is:

> "Whether, in determining the amount of the taxpayer's net liquid assets at the close of each of the suit years, for purposes of determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, the taxpayer's marketable securities should properly be taken into account at their cost, as the taxpayer contends, or at their fair market value (less the cost of converting them into cash), as the government contends." [Stipulation filed jointly by the parties, p. 5, #15, June 12, 1972]

4. The Court specifically limits this decision to value the securities at their cost to situations where the fair market value of the securities is *greater* than cost. The Court in no way implies that marketable securities should be valued at their cost when fair market value is *lower* than cost. That is an entirely different situation which may involve a more complex analysis and different accounting principles.

While the Court is aware of Tax Court decisions which have reached a contrary result,[5] the Court agrees with and prefers to apply the excellent reasoning of Judge Miller in *American Trading and Production Corporation* v. *United States* [Civil No. 70-1266-M (D. Md., May 10, 1972), 29 Am. Fed. Tax. R.2d ¶72-643]. Neither the statute[6] nor the relevant Treasury Regulations[7] suggest that the unrealized appreciation of a corporation's assets should be taken into account for purposes of the accumulated earnings tax. To force a corporate taxpayer to sell part of its retained earnings investment portfolio in order to avoid an accumulated earnings tax because the investments increased in value since purchase is inconsistent not only with sound tax accounting principles but also with better business judgment. Normally, gains are not recognized until realized and in this case the proper value of the securities, until they are converted into cash, is their cost. Corporate taxpayers should not be penalized for wise investments; they should be allowed to maximize their capital gains tax advantages in accordance with internal business policies and stock market conditions rather than being forced to sell securities which may have a high value[8] on an arbitrarily selected date merely because the unrealized fair market value of the securities on that date would trigger the accumulated earnings tax. The value of a particular stock would depend upon a wide array of imponderables relating principally to the condition of the

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5. *Golconda Mining Corporation*, 58 T.C. No. 74 (1972); *Henry Van Hummel, Inc.* v. *Commissioner*, 23 T.C.M. 1765 (1964), *aff'd*, 364 F.2d 746 (10th Cir. 1966).

6. Internal Revenue Code § 531, *et seq.*

7. Treasury Regulations §§ 1.537-1, 1.535-3(b)(1)(ii), 1.533-1(a)(2).

8. A situation which might not have been true a month or even a day before that arbitrarily selected date.

company whose stock was held, and the myriad of factors that affect the stock market itself—such as whether Henry Kissinger should go to Paris on December 30th—all far beyond the control of the company holding the investment. Adoption of the government's position would require businessmen to employ persons specializing in crystal ball gazing rather than sound business management.

Accordingly, the government is ordered to refund all accumulated earnings taxes, including interest thereon, collected for the taxpayer's fiscal years ended June 30, 1965, and June 30, 1966.

SO ORDERED, this 6 day of October, 1972.

/s/ Charles A. Moye, Jr.
United States District Judge

APPENDIX III

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 72-1979

AMERICAN TRADING AND PRODUCTION CORPORATION,
Appellee,

versus

UNITED STATES OF AMERICA,
Appellant.

Appeal from the United States District Court for the District of Maryland. James R. Miller, Jr., District Judge.

(Argued January 10, 1973 Decided April 2, 1973).

Before RUSSELL, FIELD and WIDENER, Circuit Judges.

Thomas L. Stapleton, Attorney, Tax Division, United States Department of Justice (Scott P. Crampton, Assistant Attorney General, Meyer Rothwacks, Issie L. Jenkins, Attorneys, Tax Division, United States Department of Justice, and George Beall, United States Attorney, on brief), for Appellant; John S. McDaniel, Jr. (Carolyn E. Agger, Walter J. Rockler, Steven P. Lockman, Lawrence A. Kaufman, Arnold and Porter and Cable, McDaniel, Bowie and Bond on brief), for Appellee.

PER CURIAM:

This case involves a tax refund suit filed by the taxpayer, American Trading and Production Corporation, in

the district court to recover accumulated earnings taxes which it contends were erroneously assessed and collected under Sections 531 through 537 of the Internal Revenue Code of 1954[1] for the calendar years 1963 and 1964. The district court made detailed findings of fact and concluded that the taxpayer was not availed of for the purpose of avoiding income taxes with respect to its shareholders by permitting its earnings and profits to accumulate instead of being distributed;[2] and that during the years in question the earnings and profits of the taxpayer were not permitted to accumulate beyond the reasonable needs of the business.[3] Upon these findings and conclusions judgment was entered in favor of the taxpayer for both years, whereupon the Government filed this appeal.

The ultimate question whether a corporation is availed of for the purposes proscribed by Section 532 is essentially factual and the findings and conclusions of the district court should not be disturbed by this court unless we find them to be clearly erroneous. *See Commissioner* v. *Duberstein,* 363 U. S. 278 (1960); *Smoot Sand & Gravel Corporation* v. *C. I. R.,* (4th Cir. 1960) 274 F. 2d 495, 501.

Upon examination of the record and consideration of the briefs and oral argument, we conclude that upon the facts of this case the conclusions of the district court cannot be characterized as clearly erroneous. Accordingly, for reasons sufficiently stated in the opinion of the district court[4] the judgment in favor of the taxpayer will be affirmed.

AFFIRMED.

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1. 26 U.S.C. §§ 531-537.

2. 26 U.S.C. § 532.

3. 26 U.S.C. §§ 533 and 537.

4. American Trading and Production Corporation v. United States, ... F. Supp. .....

APPENDIX IV

A. In the following cases, the taxpayers held appreciated securities; and after consideration of the issue the courts reached varying conclusions as to whether such assets should be taken into account on a cost (earnings and profits) basis or at market value for purposes of determining the applicability of the section 533(a) tax avoidance presumption.

1. *American Trading & Production Corp.* v. *United States*, 362 F.Supp. 801 (D.Md. 1972), *aff'd* 474 F.2d 1341 (4th Cir. 1973).
2. *Golconda Mining Corp.*, 58 T.C. 736 (1972), on appeal (9th Cir. Appeals Nos. 72-3202, 73-1161 and 73-1162).
3. *Harry A. Koch Co.* v. *Vinal*, 228 F.Supp. 782 (D.Neb. 1964).
4. *Starks Building Co.*, 32 T.C.M. 1201 (1973).
5. *Henry V. Hummell, Inc.*, 23 T.C.M. 1765 (1964).

B. In the following cases the taxpayers' balance sheets showed that marketable securities were held by the taxpayers, but there was no discussion by the court of the appropriate measure for taking such assets into account for purposes of determining the applicability of the section 533(a) tax avoidance presumption.

1. *Cheyenne Newspapers, Inc.* v. *Commissioner*, 494 F.2d 429 (1974).
2. *Apollo Industries, Inc.* v. *Commissioner*, 358 F.2d 867 (1st Cir. 1966).

3. *Smoot Sand and Gravel Corp.* v. *Commissioner*, 274 F.2d 495 (4th Cir.), *cert. denied*, 362 U.S. 976 (1960).
4. *E-Z Sew Enterprises, Inc.* v. *U.S.*, 260 F.Supp. 100 (D.Mich. 1966).
5. *Fenco, Inc.* v. *U.S.*, 234 F.Supp. 317 (D.Md. 1964), *aff'd*, 348 F.2d 456 (4th Cir. 1965).
6. *Delaware Trucking Co., Inc.*, 32 T.C.M. 105 (1973).
7. *Mimmac Corp.*, 31 T.C.M. 375 (1972).
8. *Federal Ornamental Iron and Bronze Co.*, 28 T.C.M. 391 (1969).
9. *Novelart Manufacturing Co.*, 52 T.C. 794 (1969), *aff'd*, 434 F.2d 1011 (6th Cir.), *cert. denied*, 403 U.S. 918 (1970).
10. *Carolina Rubber Hose Company*, 24 T.C.M. 1159 (1965).
11. *Sandy Estate Co.*, 43 T.C. 361 (1964).
12. *Breitfeller Sales, Inc.*, 28 T.C. 1164 (1957).
13. *Hansen Baking Co.*, 12 T.C.M. 685 (1953).
14. *Crawford County Printing and Publishing Co.* v. *Commissioner*, 17 T.C. 1404 (1952).
15. *Metal Office Furniture Co.*, 11 T.C.M. 1066 (1952).
16. *Hut Neckwear Co.*, 10 T.C.M. 801 (1951), *aff'd*, 205 F.2d 152 (2d Cir. 1953).
17. *Lion Clothing Co.*, 8 T.C. 1181 (1947).
18. *Syracuse Stamping Co.*, 4 T.C.M. 371 (1945).
19. *Walkup Drayage and Warehouse Co.*, 4 T.C.M. 695 (1945).

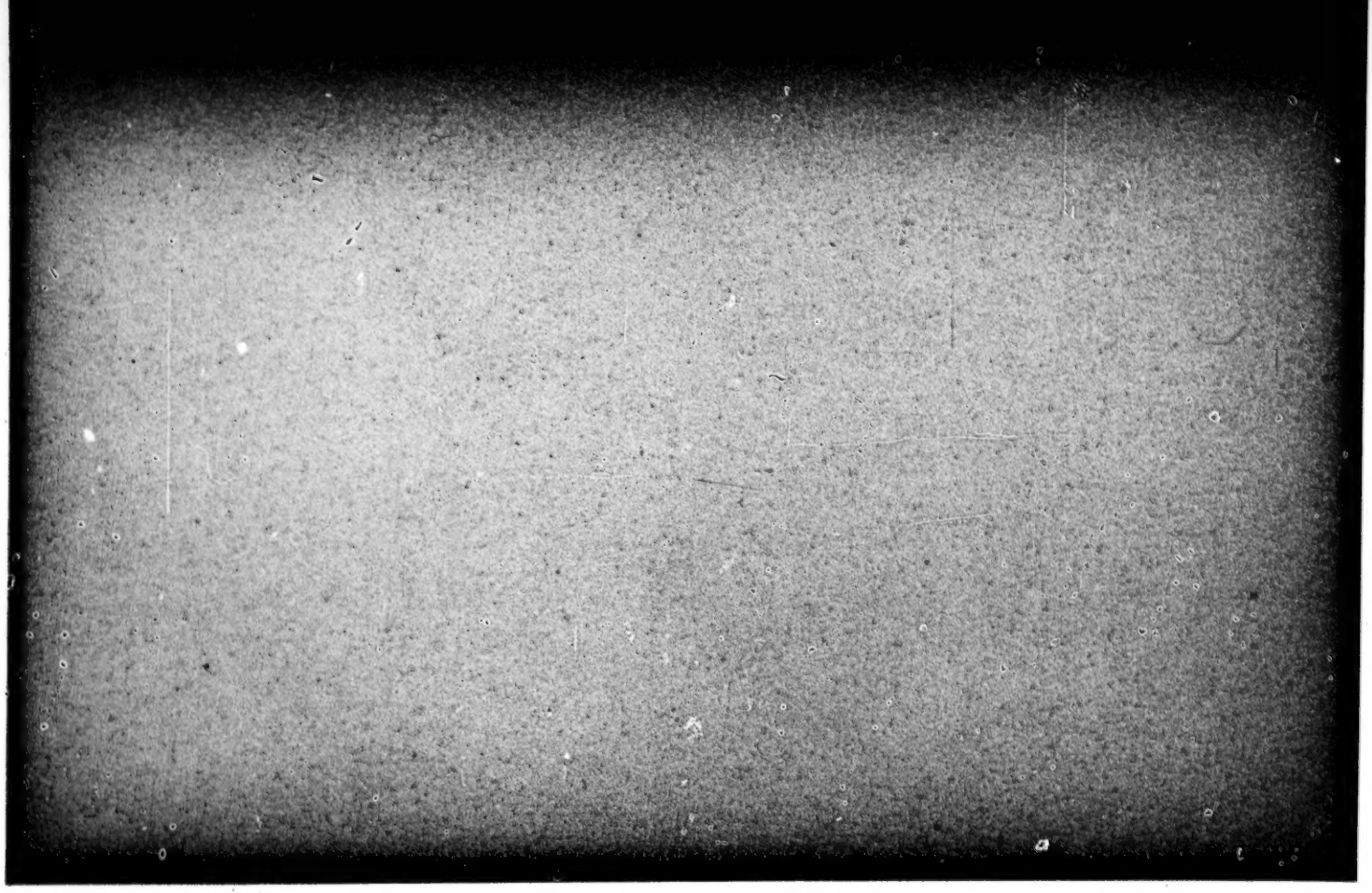
20. *John F. Boyle Co.*, 3 T.C.M. 1335 (1944).

21. *Whitney Chain and Mfg. Co.*, 3 T.C. 1109 (1944), *aff'd*, 149 F.2d 936 (2d Cir. 1945).

22. *Baker and Co., Inc.*, 2 T.C.M. 827 (1943).

23. *Bosch Brewing Co.*, 47 B.T.A. 1043 (1942), memorandum opinion reprinted in Prentice-Hall 1942 B.T.A. Memo. ¶42,429 (1942).

24. *A & J, Inc.*, 38 B.T.A. 1248 (1938).



In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The issue raised by the petition is whether, in determining if a corporation has accumulated its earnings and profits beyond the reasonable needs of its business within the meaning of Section 533(a) of the Internal Revenue Code of 1954, the amount available to meet the corporation's reasonable business needs should be ascertained by reference to marketable securities at their fair market value, as the decision below held, or at their historical cost.

The pertinent facts, as the parties stipulated, are that petitioner had reasonable business needs for operating capital of $1,198,309 and $1,455,222 at the close of its taxable years ended June 30, 1965, and June 30, 1966, respectively. In the taxable year ended June 30, 1965, petitioner owned 11,140 shares of Xerox Corporation stock with a cost basis of $116,701 and a

fair market value of $1,573,525 and Xerox convertible debentures with a cost of $30,625 and a fair market value of $48,424. In its taxable year ended June 30, 1966, petitioner owned 10,090 shares of Xerox stock having a cost basis of $102,479 and a fair market value of $2,479,617 and Xerox convertible debentures with a cost of $30,625 and a fair market value of $69,768 (R. 67).[1]

If petitioner's marketable securities (consisting largely of the greatly appreciated Xerox securities) were taken into account at cost, its net liquid assets (current assets less current liabilities) would have been equal to its reasonable business needs at the close of the taxable years at issue. However, if petitioner's marketable securities were taken into account at their fair market value at the end of the taxable years at issue less the cost of converting them to cash, its net liquid assets would have been substantially in excess of its reasonable business needs. Under the latter analysis, petitioner's net liquid assets were respectively $2,235,029 and $3,152,009 for the taxable years at issue (R. 7-8), or more than $1,000,000 in excess of its reasonable business needs for 1965 and more than double its reasonable business needs for 1966.

On audit, the Commissioner of Internal Revenue valued petitioner's Xerox holdings at fair market value. He therefore determined that petitioner's net liquid position exceeded its reasonably anticipated business needs. Accordingly, the Commissioner assessed an accumulated earnings tax against petitioner. In this refund suit, the district

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[1] "R." references are to the record appendix in the court of appeals.

court held that petitioner's marketable securities could only be taken into account at cost, and entered judgment for petitioner (Pet. App. II, A9-A13). The court of appeals reversed, holding that "the proper standard for determining the amount of taxpayer's liquid assets is the fair market value less the expense of converting them into cash." It remanded the case for a factual determination whether the purpose for petitioner's unreasonable accumulation of earnings and profits was to avoid income taxes on its shareholders (Pet. App. I, A3-A8).

1. Section 531 of the Code imposes an accumulated earnings tax on every corporation "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders * * * by permitting earnings and profits to accumulate instead of being divided or distributed." See Section 532(a). Section 533(a) in turn provides that "the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary." While the statute makes no reference to a corporation's liquid assets, it is well settled that the determination whether a corporation has permitted earnings and profits to accumulate beyond the reasonable needs of its business requires examination of the extent to which the corporation's liquid assets exceed its reasonably anticipated business needs. *Smoot Sand & Gravel Corp.* v. *Commissioner*, 274 F. 2d 495 (C.A. 4), certiorari denied, 362 U.S. 976. When the liquid assets are marketable securities, their value should be determined

on the basis of their then realizable amount, not their original cost, since it is their current value that controls the company's liquidity.

In *Helvering* v. *Nat. Grocery Co.*, 304 U.S. 282, this Court held that unrealized losses in the value of securities owned by a corporation is evidence to be considered in determining whether the corporation has accumulated earnings in excess of its reasonable needs. The court of appeals properly recognized that the teaching of *Nat. Grocery* applies as well to the converse situation presented by this case. Here, petitioner's liquid assets have appreciated in value rather than depreciated. But in order to determine whether petitioner's available financial resources exceeded its reasonably anticipated business needs, the court of appeals correctly concluded that the fair market value of petitioner's liquid assets represented a far more accurate measure of its available resources than their historical cost. Accord, *Henry Van Hummell, Inc.* v. *Commissioner*, P-H Memo T.C. para. 64,290, affirmed 364 F. 2d 746 (C.A. 10), certiorari denied, 386 U.S. 956; *Golconda Mining Corp.* v. *Commissioner*, 58 T.C. 139, supplemental opinion, 58 T.C. 736, on appeal C.A. 9, Nos. 72-3202, 73-1161, and 73-1162. See also Note, *Accumulated Earnings Tax: Should Marketable Securities Be Valued At Cost Or At Fair Market Value In Determining The Reasonablness of Further Accumulations Of Income?*, 40 Brooklyn L. Rev. 192 (1973).

2. Petitioner urges (Pet. 6-9) that the decision below conflicts with *American Trading & Production Corp.* v. *United States*, 362 F. Supp. 801 (D. Md.), affirmed *per curiam* on the opinion of the district court, 474 F. 2d 1341 (C.A. 4). (See Pet. App. III, A14-A15.) There,

a corporation whose accumulated earnings were approximately $10,000,000 and whose anticipated business needs totaled approximately $12,000,000 was held not to be liable for the accumulated earnings tax despite the fact that it owned marketable securities that had "explosively increased in value" from an original cost of $5,593,319 to a current market value in excess of $100 million (362 F. Supp. at 808-809, 811). The district court excluded those securities from consideration in determining whether the corporation had permitted earnings to accumulate in excess of its reasonable business needs on two grounds: (1) that the appreciated securities constituted the corporation's original capital; and (2) that the securities laws might have created some impediment to marketability. The court of appeals affirmed *per curiam*. *See also Harry A. Koch Co.* v. *Vinal*, 228 F. Supp. 782, 784 (D. Neb.), to the same effect.

Although the court of appeals in this case noted (Pet. App. I, A5 n.2) that these were arguable grounds for distinguishing *American Trading*, we agree with petitioner (Pet. 8), that it is irrelevant that the appreciated property held by the taxpayer in that case was original capital. In our view, appreciated property must be valued at fair market value whether or not it is part of a corporation's original capital. However, despite the irrelevance of this factor, it is not clear that the Fourth Circuit would have decided this case for the taxpayer because the appreciated stock held by petitioner was not part of its original capital. Moreover, unlike the situation in *American Trading*, there are no impediments to marketability of the appreciated securities held by petitioner as a result of the securities laws. There is accordingly no conflict of decisions warranting review by this Court.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF PETITIONER

OPINIONS BELOW

The opinions delivered in the courts below are: (1) the opinion of the United States Court of Appeals for the Fifth Circuit reported at 493 F.2d 426 (5th Cir. 1974); and (2) the opinion of the United States District Court for the Northern District of Georgia reported at 349 F. Supp. 1075 (N.D. Ga. 1973).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 3, 1974. The petition for a writ of certiorari was docketed in this Court on July

26, 1974 and was granted on December 16, 1974. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

INTERNAL REVENUE CODE of 1954, as amended, United States Code, Title 26:

"Sec. 531. *IMPOSITION OF ACCUMULATED EARNINGS TAX.*

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27 1/2 percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38 1/2 percent of the accumulated taxable income in excess of $100,000.

"Sec. 532. *CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.*

(a) GENERAL RULE—The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

* * *

"Sec. 533. *EVIDENCE OF PURPOSE TO AVOID INCOME TAX.*

(a) UNREASONABLE ACCUMULATION DETERMINATIVE OF PURPOSE—For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary."

TREASURY REGULATIONS, 26 C.F.R. 1.535-3(b)(1)(ii):

(ii) In determining whether any amount of the earnings and profits of the taxable year has been retained for the reasonable needs of the business, the accumulated earnings and profits of prior years will be taken into consideration. Thus, for example, if such accumulated earnings and profits of prior years are sufficient for the reasonable needs of the business, then any earnings and profits of the current taxable year which are retained will not be considered to be retained for the reasonable needs of the business. See section 37 and §§ 1.537-1 and 1.537-2."

QUESTION PRESENTED FOR REVIEW

Whether, in determining the applicability of Section 533(a) of the Internal Revenue Code of 1954, Taxpayer's marketable securities should properly be taken into account at their cost or at their net liquidation value (fair market value less cost of conversion into cash) as of the last day of the taxable year.

STATEMENT OF THE CASE

This is a tax refund suit involving the application of Sections 531-537 of the Internal Revenue Code of 1954, as amended,[1] which impose an accumulated earnings tax on corporations "formed or availed of for the purpose of avoiding income tax with respect to . . . [their] shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." The government assessed this penalty tax against Ivan Allen Company (hereinafter "Taxpayer") for its taxable years ended June 30, 1965 and June 30, 1966. Taxpayer paid the taxes with interest thereon and subsequently instituted this civil action on the grounds that the taxes and interest were erroneously and illegally assessed against and collected from it. (Appx. 5-49).

Taxpayer is an active operating company engaged in the business of selling office supplies and equipment in the metropolitan area of Atlanta, Georgia. As of the last day of each of the taxable years in question, Taxpayer held marketable securities which it purchased with a portion of its prior years' earnings and profits which it had retained for use in its business. (Appx. 55). These securities represented an investment of less than seven percent of Taxpayer's total undistributed earnings and constituted less than five percent of Taxpayer's total assets for each of the two years in question.

This litigation involves Taxpayer's relatively small investment of a portion of its earnings and profits in marketable securities of a single corporation—Xerox Corpora-

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1. Citations to statutory provisions are to sections of the Internal Revenue Code of 1954, as amended, codified in Title 26 of the United States Code.

tion. As of June 30, 1965, Taxpayer had invested $116,701 of its earnings and profits in Xerox common stock and $30,625 in Xerox convertible debentures. (Appx. 55). The stock market quotations on the same day showed Xerox securities trading at a price that reflected unrealized appreciation in the "value" of Taxpayer's invested earnings and profits of $1,474,623 (market value of $1,621,949 less cost of $147,326). (Appx. 55). Similarly, at the close of its taxable year 1966, Taxpayer's $133,104 of earnings and profits invested in Xerox securities appeared to have an unrealized paper appreciation of $2,416,281 (market value of $2,549,385 less cost of $133,104). (Appx. 55).

During the years in question Taxpayer had a need for operating capital to finance the operation of its retail office supply and printing business. At the close of the taxable years 1965 and 1966, Taxpayer's need for such operating capital amounted to $1,198,309 and $1,455,222, respectively. (Appx. 56). If Taxpayer's marketable securities are taken into account at their cost, which represents the amount of Taxpayer's earnings and profits invested in such securities, Taxpayer's operating capital in the form of liquid assets was equal to the amount of such needs. (Appx. 56). If, however, Taxpayer's investments in securities are taken into account at their fair market value less the costs of conversion as of the last day of each taxable year, Taxpayer's operating capital greatly exceeded its needs for such capital. (Appx. 56).

On the basis of these undisputed facts, the parties entered into a stipulation for purposes of determining the applicability to Taxpayer of the tax avoidance presumption set forth in Section 533(a). (Appx. 53-123). Through this stipulation, the Government conceded that if Taxpayer's investments are properly taken into account at their cost—which is the extent to which they represent an investment

of Taxpayer's earnings and profits—then the earnings and profits retained by Taxpayer were retained for the reasonable needs of its business and the accumulated earnings tax was erroneously and illegally assessed against and collected from Taxpayer.[2] (Appx. 57). On the other hand, if Taxpayer is required to account for its investments of earnings and profits at their net liquidation value as of the last day of the taxable year, then Taxpayer conceded that the Section 533(a) tax avoidance presumption was applicable. (Appx. 57).

The District Court resolved this legal issue for Taxpayer, holding that neither the statute nor any Treasury Regulation required that a taxpayer finance current operations out of unrealized appreciation in the value of its assets, as opposed to its earnings and profits. (Appx. 124-127).

On appeal, the Fifth Circuit reversed the judgment entered by the District Court, holding that appreciated liquid assets must be accounted for at their net liquidation value as of the last day of the taxable year. (Appx. 131-136).

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2. It should be noted that during the years in question Taxpayer did in fact pay substantial dividends to its shareholders. The amount of such dividends was $55,510 in 1965 and $50,267 in 1966. (Appx. 56).

ARGUMENT

I.

Introduction and Summary.

The accumulated earnings tax is a penalty tax imposed in addition to the normal federal income tax paid by all corporations. This penalty tax was enacted for one purpose—to penalize and thereby deter a corporation from unreasonably accumulating its earnings and profits to avoid the income tax on its shareholders. *United States* v. *Donruss Co.*, 393 U.S. 297, 303 (1969). As a federal tax statute, and especially in view of its penal nature, the accumulated earnings tax should be strictly construed and not extended by implication so as to impose penalties on taxpayers under circumstances not specifically covered. *See Gould* v. *Gould*, 245 U.S. 151, 153 (1917).

As the District Court pointed out, neither the statute nor the relevant Treasury Regulations suggest that the unrealized appreciation in a corporation's assets should be taken into account for purposes of the accumulated earnings tax. (Appx. 126). On the contrary, the most pertinent Treasury Regulation conspicuously omits any reference whatsoever to unrealized appreciation and simply provides that in determining whether earnings and profits have been unreasonably accumulated, "the accumulated earnings and profits of prior years will be taken into consideration." Treas. Reg. § 1.535-3(b) (ii).

The Fifth Circuit's decision requires that current assets be accounted for on the basis of their fair market value less the costs of conversion as of the last day of the taxable year. This decision is legally and practically unsound for the following reasons:

(1) Section 533(a) mandates a comparison of "earnings and profits"—not appreciation in asset value—with reasonable business needs;

(2) The Fifth Circuit's decision makes the accumulated earnings tax an impediment to legitimate business decisions by forcing corporate management to resort to the unrealized appreciation of corporate assets to finance business needs, contrary not only to the well-established principle that corporate management may finance business needs solely out of earnings and profits but also to the policy underlying the "realization" concept of *Eisner* v. *Macomber*, 252 U.S. 189 (1920);

(3) The Fifth Circuit's decision assumes, contrary to reason and recent experience, that the unrealized appreciation in corporate assets on the last day of the taxable year will continue to be available for use in the corporation's business whenever needed; and

(4) By making the applicability of tax turn on complex questions of valuation, the Fifth Circuit has undermined the policy set forth in *United States* v. *Donruss Co.*, 393 U.S. 297 (1969), in which this Court placed primary emphasis on readily ascertainable objective criteria as the determining factors in the administration of the penalty tax.

On the other hand, taking assets into account at their cost for purposes of determining the applicability of the Section 533(a) presumption is consistent with both the statutory language and the purpose of the accumulated earnings tax in that:

(1) Cost reflects the full extent to which a corporation has invested earnings and profits in current assets and thereby fully serves the Congressional purpose of penalizing an unreasonable accumulation of earnings and profits;

(2) A rule of cost minimizes the degree to which the accumulated earnings tax infringes upon legitimate business decisions unrelated to tax consequences by allowing corporate management to determine the most advantageous method of financing business needs and the most advantageous time to convert corporate assets without fear of being subjected to the accumulated earnings tax; and

(3) Cost provides a readily ascertainable and measurable criterion for determining the applicability of the tax.

II.

Liquid Assets Are Significant for Purposes of Section 533(a) Only As a Measure of a Corporation's Earnings and Profits Available for Use in Its Business, and the Unrealized Appreciation in Such Assets Is Not a Part of Earnings and Profits.

Through the accumulated earnings tax Congress sought to deter shareholders from avoiding income taxes by permitting their corporations to accumulate earnings in lieu of making dividend distributions. *United States* v. *Donruss Co.*, 393 U.S. 297, 303 (1969). In recognition that a corporation can pay dividends only out of its "earnings and profits," Congress, in enacting the accumulated earnings tax, adopted the statutory measure of realized earnings—earnings and profits—as the standard by which to measure a corporation's ability to pay dividends.[3] Thus,

3. S. Rep. No. 2156, 74th Cong., 2nd Sess. 17 (1936). This Senate Report explains the amendment to the statute by which the term "earnings and profits" was incorporated into the Section 531 penalty tax as follows: "The bill as reported substitutes for the word 'gains' the word 'earnings' wherever 'gains' is used in the section in connection with the word 'profits'. The phrase describes the fund out of which tax dividends are paid. The substitution makes no change in existing law but more accurately describes such funds and uses the same expression as is employed in Section 115 [now Section 316] and elsewhere in the act."

the accumulated earnings tax is imposed only on corporations that permit their earnings and profits to accumulate for the proscribed tax avoidance purpose. Section 532. And because a corporation with accumulated earnings and profits in excess of its business needs can in fact pay dividends without impairing its financial stability, Section 533(a) creates a presumption that the purpose of an excess accumulation of earnings and profits is tax avoidance.

By its plain and unambiguous terms, the applicability of the Section 533(a) presumption of tax avoidance is dependent upon a comparison of a corporation's accumulated earnings and profits with its reasonable business needs. Prior to the Fourth Circuit's decision in *Smoot Sand & Gravel Corp.* v. *Commissioner*, 274 F.2d 495 (4th Cir. 1960), *cert. denied*, 263 U.S. 976 (1960), most judicial decisions made this comparison by focusing almost exclusively on the amount of a corporation's total accumulated earnings and profits. *See, e.g., L. R. Teeple Co.*, 47 B.T.A. 270 (1942); *Newman Machine Co.*, 26 T.C. 1030 (1956). By emphasizing a corporation's total accumulated earnings and profits, however, while at the same time considering only a corporation's current and future business needs, these decisions failed to consider that a portion of the corporation's earnings might have been invested in such business related assets as inventory, land, buildings and machinery. Although such investments do not reduce the amount of a corporation's accumulated earnings and profits, the earnings invested in such assets have been put to use in the corporation's business and are not therefore available to meet the corporation's current and future business needs.

In recognition of this fact, virtually all Section 531 decisions since *Smoot* have focused only on the portion of a corporation's total accumulated earnings and profits available to meet its current and future business needs.

See, e.g., Electric Regulator Corp. v. *Commissioner,* 336 F.2d 339 (2nd Cir. 1964); *John P. Scripps Newspapers,* 44 T.C. 453 (1965). The courts have thus recognized that the only portion of a corporation's earnings and profits available to meet such needs are those which are held by the corporation in liquid form. *See, e.g., Electric Regulator Corp.* v. *Commissioner,* 336 F.2d at 344; *Smoot Sand & Gravel Corp.* v. *Commissioner,* 274 F.2d at 501; *John P. Scripps Newspapers,* 44 T.C. at 467. In short, a corporation's liquid assets are significant for purposes of the accumulated earnings tax solely as a measure of the corporation's earnings and profits available for use in its business. Unrealized appreciation in assets is clearly not a part of a corporation's accumulated earnings and profits. *See* Section 312(f) and Treas. Reg. § 1.312-1(b). Accordingly, such appreciation should not be taken into account in measuring a corporation's earnings and profits available for use in its business.

The Fifth Circuit, however, has concluded in the instant case that Taxpayer's marketable securities should be taken into account for purposes of making the Section 533(a) comparison at their fair market value less the costs of conversion. In so holding, the Fifth Circuit lost sight of the significance of Taxpayer's liquid assets as a measure of a corporation's realized earnings—its earnings and profits—available for use in its business. In effect, the Fifth Circuit has construed Section 533(a) as if it mandated a comparison of Taxpayer's business needs with its accumulated earnings and profits *plus the unrealized appreciation* in its current assets. Such an interpretation of the statute is not only contrary to the purpose and plain and unambiguous terms of Section 533(a) but also to the Treasury's own regulations, which quite properly make no reference whatsoever to unrealized appreciation but simply provide that in determining whether earnings and profits

have been accumulated beyond the reasonable needs of the business, "the accumulated earnings and profits of the prior years will be taken into consideration." Treas. Reg. § 1.535-3(b)(ii). *See also*, Treas. Reg. §§ 1.533-1(a)(1), 1.533-1(b), and 1.537-2.

The Fourth Circuit, when confronted with the same issue presented by the instant case, refused to consider the unrealized appreciation of a corporation's marketable securities. *American Trading and Production Corporation* v. *United States*, 362 F. Supp. 801 (D. Md. 1972), *aff'd per curiam*, 474 F.2d 1341 (4th Cir. 1973). The taxpayer in *American Trading* demonstrated business needs at least equal to its earnings and profits. In addition, it held marketable securities having a fair market value far in excess of demonstrated business needs. 362 F. Supp. at 807-809. As in the instant case, the taxpayer's marketable securities had exhibited substantial unrealized appreciation in value as measured by current stock market quotations.

Notwithstanding these facts, the Fourth Circuit refused to apply the Section 533(a) tax avoidance presumption and instead adopted the District Court's reasoning that:

> [T]he purpose of the Internal Revenue Code Sections in issue, in this court's view, relate to earnings and profits and the size thereof, if any, and not to original capital and the size or growth thereof.
>
> Without earnings and profits, there can be no Section 531 tax, irrespective of the size of the original capital account, or the liquidity of the capital. 362 F.Supp. at 808.[4]

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4. Although the marketable securities involved in *American Trading* were part of the taxpayer's original capital, the government has conceded in its Memorandum in Opposition to Taxpayer's Petition for Certiorari that this factor is "irrelevant." Memorandum for the United States in Opposition, p. 5.

In effect, the Fourth Circuit in *American Trading*, unlike the Fifth Circuit in the instant case, simply adhered to the Congressional purpose of penalizing only an unreasonable accumulation of earnings and profits as manifested in the plain and unambiguous terms of Sections 532 and 533 while rejecting the government's attempt to expand the scope of the penalty tax beyond its intended purpose. The essence of *American Trading* is that liquidity may be important in determining the availability of earnings and profits, but the statute penalizes only an unreasonable accumulation of earnings and profits, not liquidity.

The primary authority relied upon by the Fifth Circuit in reaching its conclusion in the instant case was this Court's decision in *Helvering* v. *National Grocery Co.*, 304 U.S. 282 (1938). During the taxable year at issue in *National Grocery*, the accumulated earnings tax penalized an unreasonable accumulation of "gains and profits". The relevant issue presented to this Court was whether the unrealized depreciation in a taxpayer's marketable securities could be deducted from its realized earnings in determining whether there had been any accumulation of "gains and profits" during the taxable year. Although the Court noted that depreciation in the market value of securities was "evidence to be considered" in determining the applicability of the accumulated earnings tax [304 U.S. at 291], it recognized that just as unrealized appreciation does not increase a corporation's accumulated earnings and profits, neither does unrealized depreciation decrease such an accumulation. 304 U.S. at 291. Accordingly, in determining the amount of the taxpayer's accumulated "gains and profits," the Court took the taxpayer's depreciated securities into account at their cost, as is dem-

onstrated by the actual figures set forth in the Court's opinion.[5]

This Court's reasoning in *National Grocery* with respect to depreciated securities is completely consistent with Taxpayer's position in the instant case. In determining the existence of an accumulation of earnings and profits, the Court concluded that depreciation in marketable securities could not be taken into account. Similarly, it is Taxpayer's position that the unrealized appreciation in marketable securities should not be taken into account in determining the amount of a corporation's accumulated earnings and profits.

Moreover, in determining the availability of a corporation's accumulated earnings for use in its business, Taxpayer recognizes, in accordance with *National Grocery,* that both the appreciation and depreciation of any marketable securities held by the corporation is "evidence to be considered." If the marketable securities have depreciated in value, there is strong evidence that the corporation's earnings and profits invested in such securities are not fully available to meet the corporation's business needs. Since they are not fully available, the full amount of the earnings and profits invested in such assets should not be taken into account in determining the applicability of the Section 533(a) tax avoidance presumption.

On the other hand, if the marketable securities have increased in value, there is substantial evidence that the full amount of the corporation's accumulated earnings and profits invested in such securities are in fact available to meet the corporation's business needs. In such a case,

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5. 304 U.S. at 291. The figures set forth in this Court's opinion represented the cost of the securities rather than their diminished market value, as is shown by the opinion of the Court of Appeals, 92 F.2d 931, 935 (3rd Cir. 1937).

the full amount of a corporation's accumulated earnings and profits which have been invested in such securities—an amount equal to their cost—should be taken into account in determining the applicability of the accumulated earnings tax. For this reason, Taxpayer has agreed that the full amount of its realized earnings invested in its liquid assets—their cost—should be taken into account in determining the applicability of Section 533(a).

In sum, Taxpayer is advocating that the same measure be applied to appreciated securities as this Court applied to depreciated securities in *National Grocery*. This measure is the amount of earnings and profits which have been invested in such securities and which are available to meet Taxpayer's business needs—the measure required by the clear and unambiguous terms of Section 533(a).

III.

Congress Adopted Earnings and Profits As the Sole Standard by Which to Measure a Corporation's Ability to Meet Its Business Needs and to Pay Dividends, Without Regard to the Unrealized Appreciation in Its Assets or Other Available Sources of Funds.

By adopting the standard of earnings and profits as the sole measure of a corporation's ability to meet its business needs and to pay dividends, Congress adhered to the fundamental tax principle first enunciated by this Court in *Eisner* v. *Macomber*, 252 U.S. 189 (1920), which requires the "realization" of a taxpayer's gains and profits before subjecting him to taxation.[6] In so doing, Congress successfully avoided injecting the problems of an annual valuation and a forced conversion of a corporation's assets

6. In 1921 Congress revised the structure of the accumulated earnings tax into its present form in light of this Court's decision in *Eisner* v. *Macomber*. Revenue Act of 1921, § 220, 42 Stat. 247 (1921).

into the accumulated earnings tax—two problems which led this Court in *Eisner* v. *Macomber* to adopt the "realization" concept. 252 U.S. at 213, 215. The Fifth Circuit, however, by its decision in the instant case, has now injected these very problems into the administration of the accumulated earnings tax.

A. Corporate Management, in the Exercise of Sound Business Judgment, May Elect to Finance Business Needs Solely Out of Accumulated Earnings and Profits Without Resorting to the Unrealized Appreciation in Corporate Assets.

A significant factor and perhaps the underlying premise of the Fifth Circuit's conclusion in the instant case was that the unrealized appreciation in Taxpayer's marketable securities was readily available for use in its business. (Appx. 134-135). The effect of this reasoning is to force Taxpayer and all other corporations similarly situated to convert their appreciated assets in order to meet their business needs, thus defeating one of the purposes underlying the realization principle of *Eisner* v. *Macomber*.[7] Such reasoning, however, not only makes the accumulated earnings tax an impediment to legitimate business decisions but also departs from the well-established principle that corporate management may legitimately elect to finance corporate business needs solely out of earnings and profits without regard to other available sources of funds and

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7. 252 U.S. 189. Although the Fifth Circuit indicated that it was not attempting to dictate the point in time at which appreciated assets are to be sold and that its decision "does not force the corporation to liquidate these securities," the Court recognized that Taxpayer, "as a consequence of its own sound business judgment in making profitable investments, must sell, exchange or distribute to the shareholders assets in order to avoid an excessive accumulation of earnings. . . (Appx. 136)." Indeed, the entire thrust of the Fifth Circuit's decision is that taxpayer must resort to the unrealized appreciation in its marketable securities to finance its business needs so that its earnings can be distributed to its shareholders.

without fear of being subjected to the accumulated earnings tax. For these reasons, the courts have uniformly rejected the government's attempts to impose the accumulated earnings tax on corporations whose management has refused to resort to borrowing but has instead elected to finance its business needs solely out of earnings and profits.[8]

Similarly, corporate management should be entitled, in the exercise of its business judgment, to finance business needs solely out of earnings and profits without resorting to unrealized appreciation through a forced liquidation of corporate assets and without fear of being subjected to the accumulated earnings tax. This is particularly true when one considers that in a forced liquidation of its securities to secure the funds necessary to meet its business needs, Taxpayer would not only have been deprived of deciding upon the most advantageous time to dispose of its securities but would also have suffered a loss of at least 37% of their value.[9]

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8. *See, e.g., Duke Laboratories, Inc.* v. *United States,* 337 F.2d 280 (2nd Cir. 1964); *Electric Regulator Corp.* v. *Commissioner,* 336 F.2d 339 (2nd Cir. 1964); *R. Gsell & Co., Inc.* v. *Commissioner,* 294 F.2d 321 (2nd Cir. 1961); *John P. Scripps Newspapers,* 44 T.C. 453 (1965); *Carolina Rubber Hose Co.,* 24 CCH Tax Ct. Mem. 1159 (1965); *Gazette Telegraph Co.* v. *Commissioner,* 19 T.C. 692 (1953), *aff'd,* 209 F.2d 926 (10th Cir. 1954); *A. H. Phillips, Inc.,* 10 CCH Tax Ct. Mem. 1007, 1013 (1951); *Kennedy Nameplate Co.,* 6 CCH Tax Ct. Mem. 622, 633 (1947), *aff'd,* 170 F.2d 196 (9th Cir. 1948); *General Smelting Co.,* 4 T.C. 313 (1944).

9. The government recognizes the loss in value which would have resulted from federal income taxes (25%) and brokerage commissions (6%). The 5% income tax which would have been imposed by the State of Georgia, however, has not been taken into account. *See* GA. CODE ANN. § 92-3102. For taxable years beginning after 1969, the loss in value would be almost 50% as a result of the federal capital gain tax rates being increased to 30% and the inclusion of capital gains as a "tax preference item" subject to an additional 10% tax. *See* Int. Rev. Code § 1201, § 56 and §57. Moreover, this loss in value will vary depending upon the rate of the capital gains tax imposed by the different states.

In short, the Fifth Circuit's reasoning leads inevitably to the conclusion that a corporation, in order to avoid the accumulated earnings tax, must avail itself of the unrealized appreciation in its assets to finance its business needs without regard to the business judgment of corporate management and without regard to the severe loss which would be suffered in disposing of such assets. Nothing in the accumulated earnings tax provisions, however, or in the relevant Treasury Regulations, requires a corporation either to liquidate its investments or to face the imposition of an accumulated earnings tax.

B. The Fifth Circuit's Decision Assumes That the Unrealized Appreciation in Corporate Assets As of the Last Day of a Taxable Year Will Continue to Be Available for Use in the Corporation's Business Whenever Needed.

Not only does the Fifth Circuit's decision require corporate management to resort to unrealized appreciation in corporate assets to finance business needs, but it also assumes that the unrealized appreciation in such assets on the last day of a taxable year will continue to be available for use in the corporation's business whenever needed. The economic downturn that has occurred since the Fifth Circuit's judgment was entered in May of 1974, dramatically illustrates that this assumption is unwarranted. During the three-month period from June 28, 1974 to September 30, 1974, the Dow-Jones Industrial Average of all common stocks declined by approximately 24% while the value of Xerox common stock declined by approximately 44%. If during this three-month period corporations had relied solely on the unrealized appreciation in their common stock investments to meet their business needs, these needs would not have been satisfied.

In short, the Fifth Circuit's use of the market value of corporate assets as a standard by which to measure a corporation's ability to meet its future business needs is inconsistent with sound business judgment. Indeed, all of the District Courts which have been confronted with this issue have recognized this problem and have reached the conclusion that such a position is impractical as well as legally unsound.[10] As pointed out by the District Court in the instant case:

> The value of a particular stock would depend upon a wide array of imponderables relating principally to the condition of the company whose stock was held, and the myriad of factors that affect the stock market itself—such as whether Henry Kissinger should go to Paris on December 30th—all far beyond the control of the company holding the investment. Adoption of the government's position would require business men to employ persons specializing in crystal ball gazing rather than sound business management. (Appx. 127).

C. Adherence to Earnings and Profits As the Sole Standard by Which to Measure a Corporation's Ability to Meet Its Business Needs and to Pay Dividends Avoids the Administrative Problems of an Annual Valuation of Corporate Assets.

The effect of the Fifth Circuit's decision in the instant case is to make the applicability of the accumulated earnings tax dependent upon the value of corporate assets as of the last day of a taxable year, thus creating the

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10. *See, e.g.*, District Court Opinion below (Appx. 124-127); *American Trading & Production Corp.* v. *United States*, 362 F. Supp. 801 (D. Md. 1972), *aff'd per curiam*, 474 F.2d 1341 (4th Cir. 1973); *Harry A. Koch Co.* v. *Vinal*, 228 F. Supp. 782 (D. Neb. 1964).

administrative problems and uncertainties among corporate managements inherent in an annual valuation of assets which Congress had apparently avoided in structuring the tax around a corporation's "earnings and profits." Indeed, it is for this very reason that the unrealized appreciation in a corporation's assets does not affect its earnings and profits. *See* BITTKER AND EUSTICE, FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS 7-13 (3rd Ed. 1971). By virtue of the Fifth Circuit's decision, however, if a corporation's assets consist of stock of closely held corporations, interests in partnerships, or real estate for which there is not a ready market, the applicability of the Section 533(a) presumption and thus the corporation's liability for the accumulated earnings tax will turn on complex questions of valuation which will be thrust upon the judiciary to answer on the basis of the myriad opinions men may have with respect to the value of corporate assets. Introducing this element into the accumulated earnings tax is contrary both to the policy underlying the "realization" concept of *Eisner* v. *Macomber*, 252 U.S. 189 (1920), and to the policy expressed in *United States* v. *Donruss Co.*, 393 U.S. 297 (1969), which, consistent with the fact that the accumulated earnings tax is a penalty tax, placed primary emphasis on readily ascertainable objective criteria as the determining factors in the administration of the tax.

CONCLUSION

For the reasons stated above, Taxpayer respectfully submits that the judgment of the Court below should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF FOR AMERICAN TRADING AND PRODUCTION CORPORATION AS *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF FOR AMERICAN TRADING AND PRODUCTION CORPORATION AS *AMICUS CURIAE*

Pursuant to Rule 42 of the Rules of this Court, American Trading and Production Corporation (hereinafter "Atapco") respectfully moves the Court for leave to file the attached brief *amicus curiae* in the above-entitled case. The brief supports the position of the respondent (hereinafter the "Government"), stated in its Memorandum for the United States in Opposition, that there is no conflict of decisions in the cases of *Ivan Allen Company* v. *United States,* 493 F. 2d 426 (5th Cir. 1974), and *American Trading and Production Corporation* v. *United States,* 362 F. Supp. 801 (D. Md. 1972), *aff'd per curiam,* 474 F. 2d 1341 (4th Cir. 1973).

The Solicitor General has consented on behalf of the Government to the filing of the attached brief *amicus*

curiae.* Counsel for the petitioner has declined to consent to the filing of this *amicus* brief.

Nature of Atapco's Interest as *Amicus Curiae*

Atapco, a corporation organized in 1931, is and has been engaged in a number of diversified business activities:

(1) Operations in the petroleum industry, consisting of exploration for and production of crude oil and natural gas, transportation primarily of petroleum products through the ownership and operation of tankers, and active and substantial interests in other oil companies.

(2) Diversified manufacturing operations.

(3) Ownership and operation of real estate projects.

Atapco paid accumulated earnings and profits tax assessed against it for the years 1963 and 1964, and thereafter filed suit for refund in the United States District Court for the District of Maryland. That Court rendered judgment in favor of Atapco which was affirmed *per curiam* by the Court of Appeals for the Fourth Circuit. This latter decision is asserted to be in conflict with the decision in the present case.

Atapco believes that the full basis of the decision of the Court of Appeals for the Fourth Circuit in its favor and the differences between the issues involved in the *American Trading* case and the present case have not been, and are not likely to be, brought to the attention of this Court, and that the Court may be led inadvertently into observations and comparisons which could seriously prejudice Atapco in the future.

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*A letter from the Solicitor General has been filed with the Clerk of Court together with this motion and brief.

The petitioner asserts a conflict between the Courts of Appeals for the Fourth and Fifth Circuits on the issue whether "unrealized appreciation of a corporation's marketable securities" should be taken into account. Pet. 6-8; Pet. Br. 12-13. This was not an issue in the *American Trading* case, and was not decided there. In the *American Trading* case, the so-called marketable securities held by Atapco were "primarily its original [contributed] and basic capital" which were "properly held and retained as *an integral part of its business.*" 362 F. Supp. at 810 (Emphasis supplied). The *American Trading* decision held that Atapco was not required to liquidate these assets in order to pay larger dividends. The Atapco situation is thus quite different from the unrelated marketable securities held by petitioner. In the present case, Xerox stock had been acquired out of earnings, were "liquid assets" and were a part of its "operating capital to finance legitimate business operations." Pet. 4-5; Pet. Br. 4-5. The petitioner's perfunctory comparison fails to recognize the important distinctions between the legal issues in the two cases.

In the present case, the only legal issue is whether the Xerox stock which was held by petitioner as operating capital should be valued at cost or on some other basis for purposes of determining its availability for meeting business needs. As noted, this issue was not involved in *American Trading.* In *American Trading,* one of many issues* was whether and to what extent Atapco was required to liquidate one integral part of its business (major interests in oil companies) so as to meet needs of other parts of its business, rather than employing its earnings for the purpose. In connection with *that issue alone,*

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*There were approximately 550 transcript pages of testimony, 350 pages of documentary exhibits, 79 specific findings of fact, a lengthy opinion and seven ultimate findings.

the District Court held that the increase in value of one integral part of Atapco's business did *not of itself* require a liquidation of such part to meet needs of other parts of its business.

The Government in its Memorandum in Opposition equally (1) ignores the express determinations by the District Court that Atapco was not obligated (as the Government had contended) to liquidate one integral part of its business (its interests in other companies) in order to meet corporate needs, and that Atapco was entitled to employ a part of its earnings and profits for this purpose; and (2) ignores the essential legal differences between capital assets which are integral parts of a corporation's business and liquid assets, which are unrelated to the business, and which form a part of operating capital. The Government, ignoring the determination that the interests in oil companies were an integral part of the business, asserts that the decision in *American Trading* was premised solely on the grounds that the interests of Atapco in other companies constituted its original capital and there were impediments to marketability. Mem. in Op., p. 5.

There is no conflict between the Fifth and Fourth Circuit decisions.

Conclusion

For the foregoing reasons, it is respectfully requested that this motion be granted in order that Atapco will not be prejudiced in the future.

Respectfully submitted,

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Dated: February 25, 1975

IN THE

Supreme Court of the United States

OCTORER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH DISTRICT

BRIEF FOR AMERICAN TRADING AND PRODUCTION CORPORATION AS *AMICUS CURIAE*

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IN THE

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OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE
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FOR THE FIFTH CIRCUIT

BRIEF FOR AMERICAN TRADING AND PRODUCTION CORPORATION AS *AMICUS CURIAE*

Statement of Interest of *Amicus Curiae*

American Trading and Production Corporation (hereinafter called "Atapco") was the plaintiff in the case of *American Trading and Production Corporation* v. *United States of America,* 362 F. Supp. 801 (D. Md. 1972), *aff'd per curiam* on the opinion of the District Court, 474 F. 2d 1341 (4th Cir. 1973), in which Atapco was determined to be entitled to a refund of accumulated earnings taxes assessed and paid for the years 1963 and 1964.

The petitioner, Ivan Allen Company, has asserted that the *American Trading* decision conflicts in principle with the holding of the Court of Appeals for the Fifth Circuit in the present case that, for the purpose of determining whether a taxpayer has retained earnings in excess of its

business needs, liquid assets (*e.g.,* marketable securities) acquired out of earnings and profits and held as a part of the taxpayer's operating capital to meet financial needs of its business should be taken into account at their appreciated market value rather than lower original cost. Pet. 5-8; Pet. Br. 11-13.

While the Government in the Memorandum of the United States in Opposition, p. 5, asserts that there is no conflict of decisions, and the Court of Appeals for the Fifth Circuit recognizes, 493 F. 2d at 427, n. 2, that the facts in *American Trading* were different from those involved in the *Ivan Allen* case and that the two cases are distinguishable, the Government simply states that the decision in *American Trading* is premised on the grounds that the securities therein involved represented original capital and there were impediments to their marketability (Memorandum for United States in Opposition, p. 5), without any reference to the Court's determination that the interests in oil companies were an integral part of Atapco's business which were not available to pay dividends or meet other business needs.

Neither the petitioner nor the Government has indicated the significant differences between the issues involved in the two cases, and, in particular, neither has clearly pointed out that—

(a) In the present case the sole issue is at what value should liquid assets, which are concededly available to meet financial needs of the business, be taken into account in determining whether it is necessary to retain earnings and profits to meet such financial needs; while

(b) In *American Trading* the issue with respect to the interests in other corporations which it held was whether they constituted an integral part of its busi-

ness and therefore were not available to meet other business needs or to pay dividends.

Atapco is concerned that neither the petitioner nor the Government will adequately present to this Court the significant difference for the purpose of the accumulated earnings tax between a liquid asset which has been acquired out of earnings and profits, which is available to meet corporate financial needs, and which is otherwise unrelated to the corporation's business, on the one hand, and, on the other hand, interests in other companies which were contributed as a part of the corporation's original capital, which constitute an integral part of the corporation's business, which are not capable of ready sale, and the disposition of which would be subject to substantial costs and discounts, contrary to sound business practice and injurious to the corporation's financial position.[1] Atapco is also concerned that the failure adequately to present the significant factual and legal differences may result in an inadvertent equating of the facts and conclusions relating to its case with the wholly different facts and conclusions relating to the *Ivan Allen Company* case and a consequent serious prejudice to Atapco in the future.

ARGUMENT

In light of the basically different facts and issues involved, the decision of the Court of Appeals for the Fifth Circuit in the present case is not in conflict with the decision of the Court of Appeals for the Fourth Circuit in the *American Trading* case.

Section 532 of the Internal Revenue Code subjects to accumulated earnings tax "every corporation . . . formed

[1]This concern is heightened by the agreement of the Government and petitioner that the difference between capital assets and liquid assets acquired out of earnings is an "irrelevant factor." Pet. Br. 12, n. 4; Memo. in Opposition, 5.

or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." The entire thrust of the statute is to tax, on a year-by-year basis, any earnings which are retained for such year unless it was necessary to retain a part or all of the earnings to meet reasonable business needs of the taxpayer. This purpose is accomplished by basing the tax on "accumulated taxable income" (Section 531), and defining accumulated taxable income as taxable income (computed with certain adjustments) minus dividends paid and minus an "accumulated earnings credit" for "an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business" (Section 535).

Where a corporation does not retain any of its earnings and profits for a particular year it has no accumulated taxable income for such year and is not liable for an accumulated earnings tax for such year regardless of the increased value of its assets. If, on the other hand, it retains a part or all of its earnings and profits for a particular year, it must be determined whether the retention was required to meet the reasonable needs of the corporation's business. This decision is "essentially factual." *Smoot Sand & Gravel Corp.* v. *Commissioner*, 241 F. 2d 197, 200 (4th Cir. 1957), *cert. den.*, 354 U. S. 922 (1957).

If the determination is that the corporation has not in a given year retained any part of its earnings in excess of the reasonable needs of its business (*i.e.*, is entitled to an accumulated earnings credit at least equal to that part of its retained earnings for the particular year) it will have no accumulated taxable income for such year. If it is determined that the corporation is not entitled to an accumulated earnings credit at least equal to the retained part of the earnings and profits, the corporation has accumulated tax-

able income on which it is liable for an accumulated earnings tax unless it can otherwise establish that it was not availed of for the purpose of avoiding income tax with respect to its shareholders by permitting earnings to accumulate instead of being distributed.

Whether a corporation has a need to retain a part or all of its earnings and profits to meet the reasonable needs of its business is dependent primarily upon whether the corporation already has sufficient assets to provide for such needs. Where the corporation has liquid assets, not related to its business, which are sufficient to meet particular needs of its business, it is self-evident that it has no need to retain further income for the same purpose. *Smoot Sand & Gravel Corp.* v. *Commissioner,* 274 F. 2d 495 (4th Cir. 1960), *cert. den.,* 363 U. S. 832 (1960); *Battelstein Investment Co.* v *United States,* 442 F. 2d 87 (5th Cir. 1971). On the other hand, capital assets which form an integral part of the corporation's business are not taken into account in determining whether it is necessary for the corporation to accumulate earnings to meet other needs of its business. *Smoot Sand & Gravel Corp.* v. *Commissioner, supra.*

It is conceded in the *Ivan Allen* case that the Xerox stock which Ivan Allen acquired out of earnings was a liquid asset forming a part of the operating capital needed to finance its business operations. Pet. 4-5; Pet. Br. 4-6; Memo. in Opposition, 1-2. The sole issue is whether these unrelated liquid assets should be taken into account at cost, which represented the earnings invested therein as contended by the petitioner, or at a higher value based on market value as contended by the Government.

This issue was not involved at all in the *American Trading* case. The facts as found by the District Court in the *American Trading* case were that Atapco was engaged in a number of diversified business activities as set forth in

the attached motion, one of which consisted of active ownership interests and participations in other companies, comprised primarily of its original contributed capital. Both prior to and in the years involved in the *American Trading* case, Atapco's capital expenditures substantially exceeded its total earnings. At the end of the years in question, Atapco also had concrete plans and commitments which would require future expenditures in excess of $12,000,000.

Without disputing these facts, the Government's position, as summarized by the District Court, was that Atapco's interests in other companies "were available at all times to the taxpaying corporation for any reasonably anticipated business need of the corporation, and that any earnings and profits from business operations or dividends on said stockholdings should have been at least in large part paid out in dividends to the taxpaying corporation's shareholders, rather than be expended for the acquisition of capital or other assets of Atapco, or for the repayment of existing indebtedness." 362 F. Supp. at 808. The District Court held, however, that these interests in other companies "were not reasonably available for the needs of the business * * * [and] were not available as readily liquid assets which the law might require be disposed of to meet current needs of the business in order to escape a Section 531 tax," but instead, "were primarily its original and basic capital * * * [and] were properly held and retained as an integral part of its business." 362 F. Supp. at 809-10.

The assertions by the petitioner Ivan Allen at page 12 of its brief that "the Fourth Circuit, when confronted with the same issue presented by the instant case, refused to consider the unrelated appreciation of a corporation's marketable securities" and that Atapco "held marketable securities having a fair market value far in excess of demonstrated

business needs" are inaccurate and incomplete because of the failure to point out the above-cited comments and holdings of the District Court. The central issue in *American Trading* was whether the interests in other companies had to be utilized to meet the reasonable needs of Atapco's business in lieu of using a part of Atapco's earnings and profits for that purpose. The issue in the present case is what value should be assigned to a liquid asset which is concededly available to meet the needs of petitioner's business.

It is respectfully submitted that the resolution by this Court of the issue in the present case either in favor of the petitioner or of the Government should not have any effect on the entirely different issues in *American Trading*. It is further respectfully submitted that the Court should not inadvertently pass judgment indirectly on the decision of the Court of Appeals for the Fourth Circuit in the *American Trading* case where that case is not under review,[2] where the elaborate record of that case is not before the Court, where the taxpayer in that case is not a party to the argument before the Court, and where the issues in that case were different from the issue now before the Court.

As this Court pointed out in the famous *Morgan* cases, there is serious danger of error where one who has not heard the evidence or arguments reaches conclusions on any case. See *Morgan* v. *United States*, 298 U. S. 468, 481 (1936). We respectfully submit that a decision on one accumulated earnings tax case does not lend itself to a talismanic solution for other accumulated earnings tax cases. *Cf. Commissioner* v. *Duberstein*, 363 U. S. 278, 284-85 (1960).

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[2]No petition for writ of certiorari was filed in the *American Trading* case.

CONCLUSION

There is no conflict between the Courts of Appeals decisions in the *Ivan Allen* case and in the *American Trading* case. The *American Trading* case, which presented different issues, is not before the Court. We respectfully request that the Court not pass judgment indirectly on the *American Trading* case in these circumstances.

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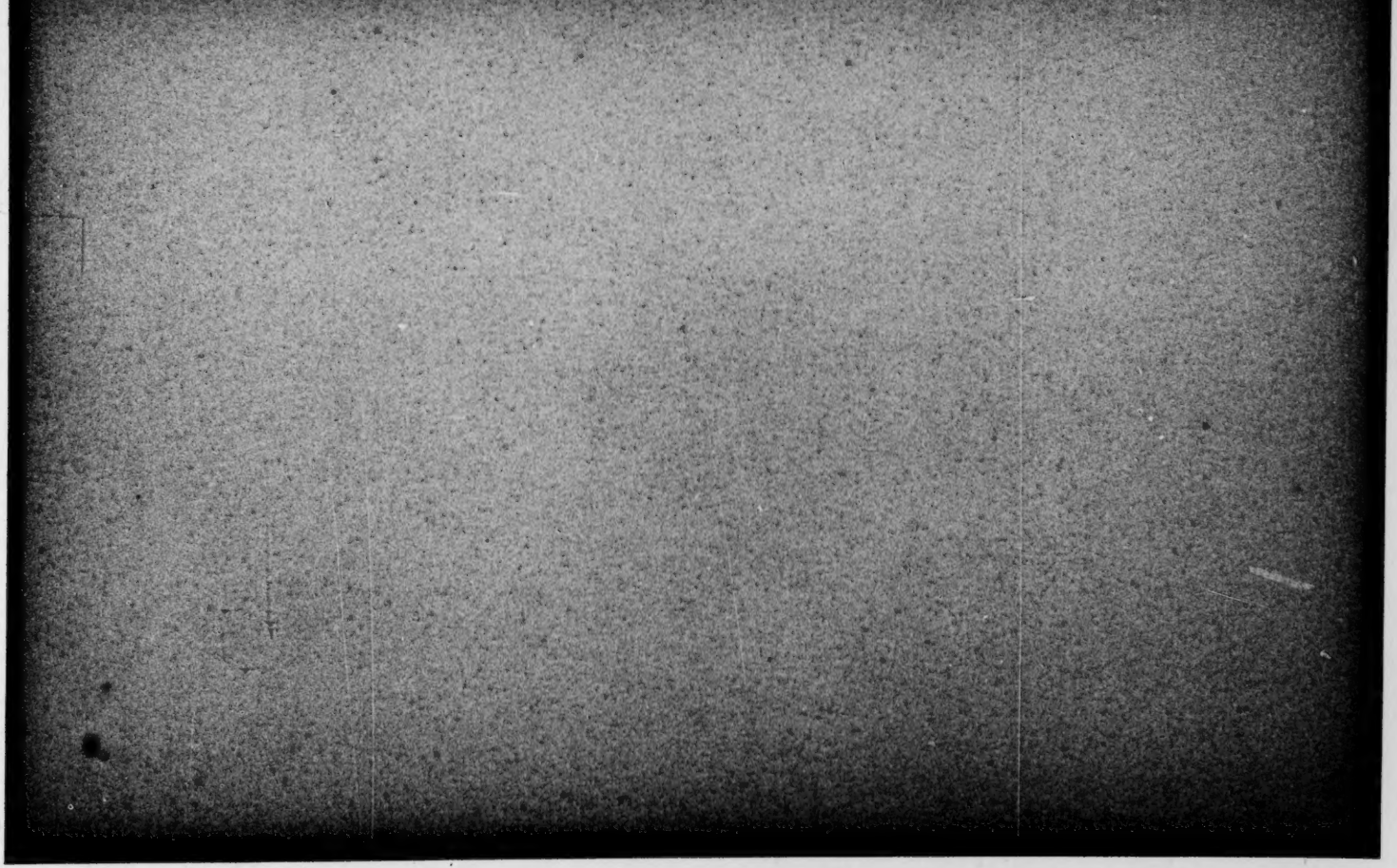

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (A. 124–127) is reported at 349 F. Supp. 1075. The opinion of the court of appeals (A. 131–136) is reported at 493 F. 2d 426.

JURISDICTION

The judgment of the court of appeals (A. 137–138) was entered on May 3, 1974. The petition for a writ of certiorari was filed on July 26, 1974, and was granted on December 16, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, for purposes of determining if a corporation has permitted its earnings to accumulate beyond the "reasonable needs of the business" so as to be presumptively liable for the tax on accumulated earnings, marketable securities owned by the corporation and freely available for use in its business should be taken into account at net realizable fair market value rather than at cost.

STATUTES INVOLVED

The pertinent provisions of Sections 531, 532, 533, 535, and 537 of the Internal Revenue Code of 1954, are set forth in the Appendix, *infra*, pp. 35–39.

STATEMENT

Petitioner is a corporation that sells office furniture, equipment and supplies (A. 53, 132). During its taxable years ended June 30, 1965 and 1966, petitioner's two major shareholders, Ivan Allen, Sr., and Ivan Allen, Jr., respectively owned 31.20 and 45.46 percent of petitioner's single outstanding class of common stock (A. 78, 104). For those years, petitioner reported taxable income of $341,045.82 and $629,512.19 (A. 59, 84). Petitioner's undistributed earnings as of June 30, 1965 and 1966, were respectively $2,200,184.77 and $2,360,146.52 (A. 70, 76, 91, 111).

At the close of its taxable years ended June 30, 1965 and 1966, petitioner owned various listed and unlisted marketable securities. Their cost and fair market values were as follows (A. 55):

	Taxable year ended June 30, 1965		Taxable year ended June 30, 1966	
	Cost	Fair market value	Cost	Fair market value
40 shares Arlington Development Corp. common stock (unlisted)	$1,000	$1,000	$1,000	$1,000
300 shares C. & S. Capital Corp. common stock (listed)	1,650	788	1,650	825
$600 Commerce and Jackson County Development Corp. bond (unlisted)	600	600		
149 shares Minnesota Mining & Manufacturing Co. common stock (listed)	600	1,650		
165 shares Southern Airways common stock (listed)	3,046	8,605		
11,140 shares Xerox Corp. common stock (listed)	116,701	1,573,525		
10,000 shares Xerox Corp. common stock (listed)			102,479	2,479,617
$30,600 Xerox Corp. convertible debentures (listed)	30,625	48,424	30,625	69,788
Total	$154,222	$1,634,592	$135,754	$2,551,210

Following an audit of petitioner's income tax returns for its taxable years ended June 30, 1965 and 1966, the Commissioner of Internal Revenue determined that petitioner had permitted its undistributed earnings for each of these years to accumulate beyond the reasonable and reasonably anticipated needs of its business and that one of the purposes of the accumulation was to avoid income tax with respect to its shareholders. The Commissioner assessed accumulated earnings taxes against petitioner of $77,383.98 and $73,131.87, for its taxable years ended June 30, 1965 and 1966 (A. 54).

Petitioner paid the tax and commenced this refund suit in the United States District Court for the Northern District of Georgia (A. 5–9). The case was decided on stipulated facts (A. 53–58). These were: that petitioner had reasonable business needs for operating capital equal to $1,198,309 and $1,455,222 for its taxable year ended June 30, 1965 and 1966; that if petitioner's marketable securities were valued at cost, its net liquid assets (current assets less current liabili-

ties) at the end of each of those taxable years, fully available for use in its business, were exactly equal to its reasonable business needs for operating capital, *viz.*, $1,198,309 and $1,455,222, respectively; that if those securities were taken into account at cost, petitioner's undistributed earnings and profits were not permitted to accumulate beyond its reasonable and reasonably anticipated business needs; that if petitioner's marketable securities were taken into account at their net fair market value [1] as of June 30, 1965 and 1966, petitioner's net liquid assets would equal $2,345,029 and $3,152,009, respectively; and that on this basis petitioner's undistributed earnings and profits were permitted to accumulate beyond its reasonable and reasonably anticipated business needs (A. 56–57)[2]

The district court held that petitioner's marketable securities could only be taken into account at cost and entered judgment for petitioner (A. 124–130). That court observed that "[c]orporate taxpayers should not be penalized for wise investments; they should be al-

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[1] It was stipulated that the cost of converting petitioner's marketable securities into cash would have been a maximum of six percent of their fair market value for brokerage commissions, and a maximum of 25 percent of the net gain after commissions for capital gains taxes (A. 55).

[2] In its claim for refund (A. 26, 46), petitioner contended that substantially all of its marketable securities in companies such as Xerox Corporation and Minnesota Mining and Mfg. Co. were of corporations engaged in business related to petitioner's business of selling office furniture. However, by stipulating that its accumulations were beyond its reasonable business needs if its marketable securities had been taken into account at net realizable fair market value, petitioner abandoned this argument.

lowed to maximize their capital gains tax advantages in accordance with internal business policies and stock market conditions rather than being forced to sell securities which may have a high value on an arbitrarily selected date merely because the unrealized fair market value of the securities on that date would trigger the accumulated earnings tax" (footnote omitted) (A. 127).

The court of appeals reversed (A. 131–136). It concluded that because petitioner's marketable securities were of such "a highly liquid character as to be readily available for business needs that might arise" (A. 135), their appreciated value should be taken into account when determining whether petitioner had accumulated earnings in excess of its reasonable business needs. In so holding, the court of appeals stated that "[t]his decision does not force the corporation to liquidate these securities at any time when a sale would be financially unwise, but only compels the corporation to comply with the proscriptions of the Code and refrain from accumulating excessive earnings and profits" (A. 135).[3]

SUMMARY OF ARGUMENT

A.

Every revenue act since the adoption of the Sixteenth Amendment in 1913 has imposed a tax upon accumulated earnings of corporations. The tax was

[3] In accordance with the agreement of the parties (A. 57–58), the court of appeals remanded the case for the additional factual determination whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders (A. 136).

enacted to foreclose the use of corporations as a means of avoiding the income tax upon dividends received by its shareholders. For without some statutory mechanism to compel the distribution of unneeded corporate earnings, a controlling shareholder would be able to postpone the income taxes on his share of the earnings in excess of corporate needs, or convert the income to capital gains through the sale of his stock, or even escape income taxation entirely by retaining his interest for ultimate transfer at his death.

The present statute is set forth in Sections 531 through 537 of the Internal Revenue Code of 1954. Section 531 imposes a tax "[i]n addition to other taxes imposed by this chapter * * * on the accumulated taxable income * * * of every corporation" that is (Section 532(a)) "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders * * *" by permitting earnings and profits to accumulate instead of being distributed. Section 533(a) provides a rebuttable presumption that a corporation which has accumulated earnings "beyond the reasonable needs of the business" did so with "the purpose to avoid the income tax with respect to shareholders * * *." The objective fact of the accumulation is "determinative" of the tax avoidance motive "unless the corporation by the preponderance of the evidence shall prove to the contrary."

This case focuses upon the extent to which a corporation's true economic condition becomes relevant in determining its liability for the tax upon "accumulated taxable income." The question presented is

whether, for purposes of determining accumulated earnings tax liability, marketable securities owned by a corporation should be taken into account at their net realizable fair market value or, as petitioner contends, at cost. Here, petitioner owned marketable securities which increased twenty-fold in value to an amount far beyond its stipulated reasonable business needs for the taxable years at issue. Because the marketable securities represented liquid assets freely available for use in petitioner's business, the Commissioner took their net realizable fair market value into account in determining whether petitioner had accumulated earnings "beyond the reasonable needs of the business" within the meaning of Section 533(a).

The decision of the court of appeals upholding the Commissioner's measure of petitioner's true economic condition properly implements the congressional purpose underlying the accumulated earnings tax. That purpose, as stated by this Court, is "to compel the company to distribute any profits not needed for the conduct of its business so that, when so distributed, individual stockholders will become liable" for taxes on the dividends received. *Helvering* v. *Stock Yards Co.*, 318 U.S. 693, 699.

B.

1. The objective inquiry required by Section 533(a) involves an initial comparison of the corporation's "accumulated" "earnings and profits" with the "reasonable needs of the business." However, much of a corporation's accumulated earnings and profits on the liabilities side of the balance sheet is often reflected

in a variety of fixed assets which are unavailable for distribution as dividends. A rigid mathematical comparison of "accumulated earnings and profits" with the "reasonable needs of the business" is therefore an inaccurate gauge of the assets freely available to meet the needs of the business. As a result, the courts have long held, and petitioner concedes, that the determination whether a corporation has permitted earnings and profits to accumulate beyond the reasonable needs of its business requires an examination of the extent to which its liquid assets exceeed its reasonably anticipated business needs.

Once it is recognized that the application of the accumulated earnings tax turns on whether the corporation has liquid assets in excess of its reasonable business needs, it follows that the decision below correctly held that such assets must be taken into account at their net realizable value. When such liquid assets are marketable securities which are readily convertible into cash, their proper measure is their net realizable value, since it is that amount that determines the corporation's liquidity. The cost of such liquid assets bears little, if any, relevance to the current financial condition of the corporation and its capacity to pay dividends. Their cost is simply a balance sheet entry for historical purposes. Since the net realizable value of such highly liquid assets exceeded petitioner's reasonable business needs, it could not justify the accumulation of any of its taxable income for the two years at issue. Petitioner's failure to distribute that income to its shareholders triggers the accumulated earnings tax.

In urging that, for the purposes of this case, the correct measure of petitioner's marketable securities is their net realizable value, we do not contend that the unrealized appreciation of these securities is "earnings and profits" within the meaning of Section 533(a). Rather, petitioner's ownership of these securities, which are freely available for use in its business, rendered unreasonable its failure to distribute to its shareholders its earnings for the years at issue for purposes of the tax on accumulated earnings. Pursuant to Section 535(a), it is those earnings, which are included in "accumulated taxable income", upon which the tax is imposed. The fact that the unrealized appreciation of petitioner's securities is not included in earnings and profits does not foreclose its consideration in determining whether the corporation is subject to the tax on accumulated earnings.

2. The court of appeals correctly recognized that this Court's decision in *Helvering* v. *Nat. Grocery Co.*, 304 U.S. 282, 291, has essentially resolved the question presented in this case. There, the Court held that unrealized losses in the value of marketable securities owned by a corporation were "evidence to be considered" in determining whether the corporation was liable for the accumulated earnings tax. The teaching of *Nat. Grocery Co.* is fully applicable to the converse situation presented here where petitioner's liquid assets have appreciated in value. In both cases, a realistic determination of corporate liquidity requires that such assets be taken into account at their net realizable value.

Nothing in *American Trading & Production Corp.* v. *United States*, 362 F. Supp. 801 (D. Md.), affirmed *per curiam* on the opinion of the district court, 474 F. 2d 1341 (C.A. 4), supports petitioner's argument that its marketable securities should be taken into account at cost. To the extent that the decision in that case turned on the fact that the taxpayer's marketable securities were part of its original capital or upon the ground that the accumulated earnings tax statute did not require the conversion of such assets to cash to meet business needs, it is erroneous. However, one of the grounds of that decision was that certain securities were not marketable in the hands of its corporate owner because of restrictions imposed by the securities laws. Hence, the court totally excluded such securities from consideration because they were not in fact liquid under the peculiar circumstances of that case. On this latter ground the case is distinguishable.

3. The decision of the court of appeals does not, as petitioner argues, force a conversion of its marketable securities into cash. Such conversion could be avoided only if marketable securities were totally excluded from consideration, a position petitioner does not advance. However, even under petitioner's cost valuation rule, situations could arise where the corporation would still have to convert marketable securities into cash if it wished to avoid the imposition of the accumulated earnings tax. Thus, there is nothing inherent in taking marketable securities into account at net realizable value which requires conversion of such securities into cash. The reason for applying the net realizable value rule to marketable securities, which we urge here, is that it reflects the

utility of those assets for use in meeting the reasonable business needs of the corporation more accurately than their cost.

ARGUMENT

MARKETABLE SECURITIES OWNED BY A CORPORATION AND FREELY AVAILABLE FOR USE IN ITS BUSINESS SHOULD BE TAKEN INTO ACCOUNT AT NET REALIZABLE FAIR MARKET VALUE IN DETERMINING WHETHER THE CORPORATION HAS PERMITTED ITS EARNINGS TO ACCUMULATE BEYOND THE REASONABLE NEEDS OF THE BUSINESS

A. INTRODUCTION

Under our system of income taxation, corporate earnings are subject to tax at two different levels. First, there is a tax imposed upon the income of corporations. Secondly, when a corporation distributes earnings to its shareholders through dividends, the distributions are subject to the income tax imposed upon individuals.

Because of the disparity between corporate tax rates and the higher graduated individual income tax rates,[4] a corporation can significantly reduce its shareholders' tax liability by accumulating its earnings beyond the amount reasonably needed to operate its business. Without some method to compel the distribution of unneeded corporate earnings, a controlling shareholder would be able to postpone the income taxes on his share of the earnings in excess of the corporate needs, or convert the income to capital gain through the sale

[4] The corporate income tax rate is 22 percent of the first $25,000 of taxable income and 48 percent of the excess over $25,000. See Section 11 of the Internal Revenue Code of 1954. The graduated rates on individuals range from 14 percent to 70 percent. See Section 1 of the Code.

of his stock, or even escape income taxation entirely by retaining his interest for ultimate transfer at his death. See, generally, Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders*, ¶ 8.01 (1971 ed.).

In order to foreclose the use of corporate entities as a means of avoiding the income tax on dividends received by shareholders, every revenue act since the adoption of the Sixteenth Amendment in 1913 has imposed a tax upon unnecessary accumulations of corporate earnings for the purpose of insulating shareholders from the income tax on dividends. As this Court explained in *Helvering* v. *Stock Yards Co.*, 318 U.S. 693, 699, and reaffirmed in *United States* v. *Donruss Co.*, 393 U.S. 297, 303, the purpose of the tax is "to compel the company to distribute any profits not needed for the conduct of its business so that, when so distributed, individual stockholders will become liable" for taxes on the dividends received.[5]

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[5] As the Court pointed out in *United States* v. *Donruss Co.*, *supra*, 393 U.S. at 303–307, the accumulated earnings tax originated in Section IIA(2) of the Tariff Act of 1913, 38 Stat. 166, which imposed a tax on the shareholders of any corporation "formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed * * *." Accumulations beyond the reasonable needs of the business were "prima facie evidence of a fraudulent purpose to escape such tax * * *." The word "fraudulently" was deleted in the Revenue Act of 1918, Section 220, 40 Stat. 1072. It had made the provision "of little value, because it was necessary to its application that intended fraud on the revenue be established in each case." S. Rep. No. 617, 65th Cong., 3d Sess., p. 5.

The tax on the shareholders continued through 1920. Then,

The present statutory provsions, Sections 531 through 537, comprise Part I of Subchapter G of the Internal Revenue Code of 1954, a group of sanctions aimed generally at "Corporations Used to Avoid Income Tax on Shareholders." Section 531 imposes a tax in "addition to other taxes imposed by this chapter * * * on the accumulated taxable income * * * of every corporation" that is (Section 532(a)) "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders * * * by permitting earnings and profits to accumulate instead of being divided or distributed." Section 533(a) provides a rebuttable presumption that a corporation

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"[d]oubts apparently arose as to the validity of taxing income which the taxpayers had never received, and in 1921 it was thought safer to tax the company itself * * *." *United Business Corp.* v. *Commissioner*, 62 F.2d 754, 756 (C.A. 2). Thus, the framework of the present statute was adopted by Section 220 of the Revenue Act of 1921, 42 Stat. 247, which shifted the incidence of the tax from the shareholders to the corporation. The change was prompted by *Eisner* v. *Macomber*, 252 U.S. 189, which held that the distribution of common stock by a corporation having only common stock outstanding could not be taxed as income to the shareholders (see H. Rep. No. 350, 67th Cong., 1st Sess., pp. 12-13). However, the Court subsequently suggested that the 1921 change was an unnecessary precaution. See *Helvering* v. *Nat. Grocery Co.*, 304 U.S. 282, 288.

Although the statutory language has been changed from time to time, every income tax act since 1921 has imposed the tax on the corporation, rather than the shareholders. See Revenue Act of 1924, Section 220, 43 Stat. 277; Revenue Act of 1926, Section 220, 44 Stat. 34; Revenue Act of 1928, Section 104, 45 Stat. 814; Revenue Act of 1932, Section 104, 47 Stat. 195; Revenue Act of 1934, Section 102, 48 Stat. 702; Revenue Act of 1936, Section 102, 49 Stat. 1676; Revenue Act of 1938, Section 102, 52 Stat. 483; Internal Revenue Code of 1939, Section 102(a), (26 U.S.C., 1952 ed.).

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which has accumulated earnings "beyond the reasonable needs of the business" did so with 'the purpose to avoid the income tax with respect to shareholders * * *." The fact of the accumulation is "determinative" of the tax avoidance motive "unless the corporation by the preponderance of the evidence shall prove to the contrary."*

Finally, Section 535(a) defines the base of the tax—"accumulated taxable income"—as the corporation's "taxable income" for the year at issue after adjustment for: (1) various items set forth in Section 535 (b); (2) the deduction in Section 561 for dividends paid; and (3) the accumulated earnings credit of Section 535(c). The adjustments prescribed in Section 535(a) and (b) are generally designed to insure that a corporation's "accumulated taxable income" more accurately reflects the amount actually available to the corporation for business purposes.

Thus, for example, in computing "accumulated taxable income", Section 535(a) provides a deduction for dividends paid (see Section 561), and Section 535(b)(1) permits an offset for federal income taxes—both of which are not deductible for ordinary income tax purposes.

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* The present language of the statutory presumption originates in Section 102(c) of the Revenue Act of 1938, 52 Stat. 483. The legislative purposes was to replace the "prima facie" presumption with a "determinative" one to combat tax avoidance that had persisted "to a considerable extent" under pre-1938 law. See S. Rep. No. 1567, 75th Cong., 3d Sess., 4. By making the presumption "determinative", Congress shifted to the taxpayer not only the burden of going forward, as under prior law, but also the burden of proof, see *id.* at 16. See also, *United States* v. *Donruss Co.*, *supra*, 393 U.S. at 305–306.

Those payments deplete available corporate resources and must be deducted if an accurate picture of a corporation's economic condition is to be obtained. Conversely, Section 535(b)(3) disallows the dividends-received-deduction available to corporations for income tax purposes (see Section 243), since dividends received by a corporation would be freely available for use in its business.

This case focuses upon the extent to which a corporation's true economic condition becomes relevant in determining its liability for the tax upon "accumulated taxable income" imposed by Section 531 of the Code. Here, petitioner owned marketable securities, acquired at a cost of $154,222, which dramatically increased in fair market value to $1,634,592 and $2,551,210, as of the ends of its two taxable years at issue. However, it was stipulated that petitioner's reasonable business needs for those years were only $1,198,309 and $1,455,222. Because the marketable securities represented liquid assets freely available for use in petitioner's business, the Commissioner took their net realizable fair market value into account as a measure of petitioner's true financial condition in determining whether it had accumulated earnings "beyond the reasonable needs of the business" within the meaning of Section 533(a).

The question in this case is whether marketable securities owned by a corporation should be taken into account, as the decision below held, at their net realizable fair market value, or, as petitioner contends, at cost, for purposes of determining the availability of

working capital for the reasonable needs of the business.[7] We submit that the decision of the court of appeals upholding the Commissioner's measure of petitioner's marketable securities at their net realizable fair market value is grounded on the economic reality which is at the heart of the congressional purpose underlying the tax on accumulated corporate earnings, as this Court stated—"to compel the company to distribute any profits not needed for the conduct of its business"—in order that the stockholders will bear the tax upon the dividends received. *Helvering* v. *Stock Yards Co., supra,* 318 U.S. at 699.

B. THE STATUTORY PURPOSE OF COMPELLING DISTRIBUTION OF PROFITS NOT NEEDED FOR THE CONDUCT OF THE BUSINESS REQUIRES THAT MARKETABLE SECURITIES BE TAKEN INTO ACCOUNT AT THEIR NET REALIZABLE FAIR MARKET VALUE IN DETERMINING WHETHER AN UNREASONABLE ACCUMULATION EXISTS

1. The target of the accumulated earnings tax is described in the final words of Section 532(a)—avoidance of the income tax with respect to shareholders "by permitting earnings and profits to accumulate instead of being divided or distributed." The tax is specifically designed to deter conduct—"the manipulation of dividends to avoid taxes" by avoiding a declaration of dividends "until a season more propitious for distribution." *United Business Corp.* v. *Commis-*

[7] Petitioner does not contend that its marketable securities should not be considered as part of its liquid assets. Indeed, Treasury Regulations, Sections 1.533-1(a)(2)(ii) and 1.537-2(c)(4) provide that the presence of marketable securities is affirmative evidence of the tax-avoidance purpose. See *Cheyenne Newspapers, Inc.* v. *Commissioner,* 494 F. 2d 429, 435 (C.A. 10).

sioner, 62 F. 2d 754, 755, 756 (C.A. 2). By imposing an additional tax when a corporation has accumulated earnings in excess of the "reasonable needs of the business," the statute provides a mechanism to compel the distribution of "profits not needed for the conduct of its business" (318 U.S. at 699).

As we shall point out in greater detail, *infra*, in urging that the correct measure of petitioner's marketable securities is their net realization value, we do not contend that the unrealized appreciation of petitioner's securities is "accumulated" "earnings and profits" within the meaning of Section 533(a). Rather, we submit that petitioner's ownership of the securities which are freely available for use in its business rendered unreasonable its failure to distribute to its shareholders its additional earnings for the years at issue for purposes of the tax on accumulated earnings. Pursuant to Section 535(a), it is those earnings, included in "accumulated taxable income", upon which the tax is imposed.

The ultimate fact that brings the accumulated earnings tax into play is the subjective tax-avoidance motive of those in command of corporate affairs. Corporate managers are hardly likely to acknowledge that the purpose of an accumulation was to avoid the tax on dividends with respect to the shareholders. As this Court observed in *United States* v. *Donruss Co., supra,* 393 U.S. at 307, "Congress recognized the tremendous difficulty of ascertaining the purpose of corporate accumulations" and "saw that accumulation was often necessary for legitimate and reasonable business purposes." In reviewing the legislative

history of the accumulated earnings tax, the Court there concluded that "[i]t appears clear to us that the congressional response to these facts has been to emphasize unreasonable accumulation as the most significant factor in the incidence of the tax" (*ibid.*). Thus, the existence of the tax-avoidance motive is demonstrated on the basis of the objective fact of the accumulation itself.

These considerations explain the need for the presumption in Section 533(a), which makes an unreasonable accumulation "determinative" on the issue of tax-avoidance purpose in the absence of a contrary showing. As Judge Learned Hand explained in holding the 1921 accumulated earnings tax valid, "a statute which stands on the footing of the participants' state of mind may need the support of presumption, indeed be practically unenforceable without it * * *." *United Business Corp.* v. *Commissioner, supra,* 62 F.2d at 755. The idea is to "make the taxpayer show his hand"—"to compel the taxpayer to disclose the facts" (*id.* at 755, 756). Thus, by focusing upon the reasonableness of the accumulation, Section 533(a) introduced into accumulated earnings tax determinations what this Court characterized in *Donruss Co.* as a "much more objective inquiry * * * susceptible of more effective scrutiny, than * * * the vagaries of corporate motive" (393 U.S. at 307).

The objective inquiry required by Section 533(a) involves an initial comparison of the corporation's "accumulated" "earnings and profits" with "the rea-

sonable needs of the business."[8] However, since the purpose of the accumulated earnings tax is to compel the distribution of unneeded profits as dividends, a purely mechanical comparison of the total retained earnings of prior years with the reasonable needs of the business would not provide an accurate measure of the corporation's dividend-paying capacity.

In many situations, a corporation's accumulated earnings and profits on the liabilities side of the balance sheet is reflected in a variety of fixed assets such as plant and equipment on the assets side of the balance sheet. Investment in such fixed assets does not decrease the accumulated earnings and profits. That account represents the corporation's liability to its shareholders resulting from increases in its assets accounts attributable to profitable operations. But unlike cash or other liquid assets, earnings and profits cannot be spent.

Thus, even though a corporation's accumulated earnings and profits mathematically exceeded its reasonable business needs, it would be unrealistic and contrary to the underlying policy of the accumulated

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[8] Section 537(a)(1), added to the statute in 1954, defines the term "reasonable needs of the business" to include the "reasonably anticipated needs of the business." See S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 317–318. In addition, Section 906(a) of the Tax Reform Act of 1969, 83 Stat. 714–715, adding Sections 537(a)(2) and (3) for taxable years ending after May 26, 1969, expands the term "reasonable needs of the business" to include (1) the amount needed by a corporation to redeem stock of a decedent under Section 303 of the Code, and (2) in particular circumstances, the amount needed to redeem, from a private foundation, stock constituting excess business holdings.

earnings tax to assume that a corporation which had all of its accumulated earnings and profits invested in fixed assets used in the conduct of its business, could distribute any unneeded profits to its shareholders. A corporation's ability to pay dividends is a function of its liquidity, *i.e.*, the amount of idle current assets at its disposal.

As a result, it is settled that the determination whether a corporation has permitted earnings and profits to accumulate beyond the reasonable needs of its business requires an examination of the extent to which its liquid assets exceed its reasonably anticipated business needs. In *United Block Co.* v. *Helvering,* 123 F.2d 704, 705 (C.A. 2), Judge Learned Hand observed: "The really important question is, not how much capital of all sorts, but how much quick assets, it was reasonable to keep on hand for the business * * *." Accord: *Smoot Sand & Gravel Corp.* v. *Commissioner,* 274 F.2d 495, 501 (C.A. 4), certiorari denied, 362 U.S. 976; *Electric Regulator Corp.* v. *Commissioner,* 336 F.2d 339, 344 (C.A. 2); *Novelart Manufacturing Co.* v. *Commissioner,* 52 T.C. 794, 806, affirmed, 434 F.2d 1011 (C.A. 6), certiorari denied, 403 U.S., 918. See also Study Prepared for the Joint Committee on the Economic Report, *The Taxation of Corporate Surplus Accumulations,* 82d Cong., 2d Sess., pp. 11, 16–19.

Once it is recognized that the application of the accumulated earnings tax turns on whether the corporation has liquid assets in excess of its reasonable business needs, it follows that such assets must be taken into account at their net realizable fair market value. When such liquid assets are marketable securities, as in this case, their proper measure is their then realizable value, since it is that amount that controls the corporation's liquidity.

In comparing liquid assets with reasonable business needs, it makes little sense to use cost figures ($154,222) on the assets side of the equation which may bear no relationship to present value while using current economic data to determine the amount necessary for the reasonable needs of the business ($1,198,309 and $1,455,222).

The cost of those securities is an irrelevant gauge to petitioner's true financial condition. A potential lender appraising petitioner's financial condition would not evaluate petitioner's marketable securities at cost. For purposes of the accumulated earnings tax, the Commissioner similarly must consider the range of the current values of marketable securities since the nature of his inquiry is precisely the same as that of a potential lender, *i.e.*, what is the realistic financial condition of the corporation.

If assets are available for use in the business and they are "current" assets, *i.e.*, readily convertible into cash, their practical utility to petitioner can be measured only by the amount of cash realizable upon their sale, which far exceeded petitioner's business needs. Thus, petitioner could not justifiably fail to distribute its current earnings during the taxable years as dividends to its shareholders. Since the marketable securities in this case were readily convertible to cash, the symmetry of the statutory comparision of liquid assets with reasonable business needs required that the securities be measured at their net realizable cash value.[9]

2. In holding that petitioner's marketable securities had to be taken into account at their net realizable fair market value, the court of appeals correctly rec-

[9] Petitioner complains (Br. 17, n. 9) that the 5 percent Georgia income tax has not been taken into account in computing the net realized value of its marketable securities. However, that omission is due to the fact that the stipulation agreed to by petitioner provided that the cost of sale would have been a maximum of 25 percent of the gain (payable as federal capital gains taxes) and 6 percent of the fair market value (payable as brokerage commissions) (A. 55). See n. 1, *supra*. But even taking the Georgia tax into account, petitioner has not shown that the net realizable value would have been equal to or less than its businees need. Of coure, petitioner's further assertions (Br. 17, n. 9) of the post-1969 tax consequences of such a sale are irrelevant. The pertinent time for measurement of the net realizable value is during petitioner's taxable years ended June 30, 1965 and 1966, the taxable years at issue. Petitioner's claims (Br. 18) concerning the decline in value of Xerox stock during the period June–September, 1974, are similarly irrelevant.

ognized (A. 133–134) that this Court's decision in *Helvering* v. *Nat. Grocery Co.*, 304 U.S. 282, rendered almost 40 years ago, had essentially resolved the question presented in this case. There, the Court held that unrealized losses in the value of marketable securities owned by a corporation was "evidence to be considered * * * in determining the issue of fact whether the accumulation of profits was in excess of the reasonable needs of the business" (304 U.S. at 291). Since the taxpayer in that case had massive accumulations of earnings from prior years, the Court went on to conclude that depreciation in the market value of the securities did not preclude a finding that the accumulation of the current year's profits was in excess of the reasonable needs of the business.

The teaching of *Nat. Grocery Co.* is fully applicable to the converse situation presented in this case. Here, petitioner's liquid assets have appreciated in value rather than depreciated. But in order to determine whether petitioner's available financial resources exceeded its reasonable and reasonably anticipated business needs, the court of appeals correctly concluded that the fair market value of petitioner's marketable securities represented a far more accurate measure of its available resources than their historical cost.[10] In

[10] Although petitioner acknowledges (Br. 13, 14) that the Court in *Nat. Grocery Co.* stated that depreciation in the market value of securities was "evidence to be considered", it argues (Br. 14) that the Court's use of cost figures for the securities in its opinion demonstrates that it concluded that such depreciation could not be taken into account in determining the existence of accumulated earnings and profits. A careful reading of the relevant portions of the opinion (304 U.S. at 291–

addition to the decision below, the *Nat. Grocery Co.* rule has been applied by several lower courts in taking into account the market value of appreciated securities for purposes of the accumulated earnings tax. See *Battlestein Investment Co.* v. *United States,* 442 F.2d 87, 89 (C.A. 5); *Henry Van Humell, Inc.* v. *Commissioner,* 23 T.C.M. 1765, affirmed, 364 F.2d 746 (C.A. 10); *Golconda Mining Corp.* v. *Commissioner,* 58 T.C. 139, supplemental opinion, 58 T.C. 736, 737–739, reversed on other grounds, 507 F.2d 594 (C.A. 9). Contra, *Harry A. Koch Co.* v. *Vinal,* 228 F. Supp. 782 (D. Neb.).[11]

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292) indicates that the Court employed the cost figures to show that the taxpayer had permitted its prior earnings to accumulate by investing substantial amounts in securities which were unrelated to its business. While the Court held that the unrealized losses did not as a matter of law prevent the imposition of the tax on the current year's accumulated taxable income, it did so only after concluding that the taxpayer's cash position did not justify the retention of any further earnings.

Thus, *Nat. Grocery* does not stand for the proposition, urged by petitioner (Br. 14–15), that the cost of marketable securities is the relevant measure for purposes of the accumulated earnings tax. Indeed, the dramatic twenty-fold increase in the value of petitioner's marketable securities decisively refutes its argument that an increase in value is only "substantial evidence" that the full amount of the original investment is available to meet its business needs. Petitioner can hardly deny that the entire net amount realized from the sale of such securities would be available for use in its business.

[11] In *Harry A. Koch Co.*, relied on by petitioner (Br. 19, n. 10), the district court acknowledged the applicability of *Nat. Grocery Co.* to depreciated marketable securities but valued appreciated securities at cost. It based its decision on the fact that in light of the capital gains tax, it was unrealistic to as-

None of the reasons set forth in *American Trading & Production Corp.* v. *United States*, 362 F. Supp. 801 (D. Md.), affirmed *per curiam* on the opinion of the district court, 474 F.2d 1341 (C.A. 4)—the principal authority relied upon by petitioner (Br. 12–13)—establishes that the proper measure of marketable securities for purposes of the accumulated earnings tax is their cost. There, a corporation whose accumulated earnings were approximately $10,000,000

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sume that the full value of the securities would be available upon sale, and that accountants have traditionally valued such assets at cost on the balance sheet (228 F. Supp. at 784). Given the fact that the values employed by the Commissioner here were net realizable amounts after deduction for the capital gains tax and brokerage commissions, the district court's first objection is without force here.

Moreover, accounting conventions which are grounded upon the policy of representing a corporation's financial condition as conservatively as possible in order to protect investors and creditors, have no application to the question under the accumulated earnings tax whether a corporation has liquid assets in excess of its reasonable business needs. See *Golconda Mining Corp.* v. *Commissioner*, *supra*, 58 T.C. at 737. Under similar circumstances, this Court has consistently applied the congressional policy underlying a revenue statute even when it conflicts with standard accounting practice. See, *e.g.*, *Schlude* v. *Commissioner*, 372 U.S. 128; *American Automobile Association* v. *United States*, 367 U.S. 687. At all events, it is becoming common practice to reflect both the fair market value and the cost of marketable securities on corporate balance sheets, even in the accounting profession. See Arthur Anderson & Co., *Accounting and Reporting Problems of the Accounting Profession* (1962 ed.), p. 110, *et seq.*, reprinted in Fiflis & Kripke, *Accounting for Business Lawyers* (1971 ed.). pp. 125–126; Kester, *Advanced Accounting*, pp. 117–118 122–124 (1946 ed.). Indeed, petitioner itself reflected the fair market value as well as the cost of its marketable securities on its corporate balance sheets for the taxable years at issue (A. 112, 118).

and whose anticipated business needs totaled approximately $12,000,000 was held not to be liable for the accumulated earnings tax despite the fact that it owned marketable securities that had "explosively increased in value" from an original cost of $5,593,319 to a current market value in excess of $100 million (362 F. Supp. at 806–807, 808–809, 811). The district court excluded those securities from consideration in determining whether the corporation had permitted earnings to accumulate in excess of its reasonable business needs on three grounds: (1) that the appreciated securities constituted the corporation's original capital; (2) that the accumulated earnings tax statute was not intended to require the conversion of such assets to cash to meet business needs; and (3) that the securities laws might have created some impediment to marketability. The court of appeals affirmed *per curiam*.

To the extent *American Trading* rests upon the fact that the taxpayer's marketable securities were part of its original capital, the decision is erroneous. We agree with petitioner (Pet. 8) that "this factor has no independent significance." Appreciated liquid assets must be valued at realizable fair market value whether or not they are part of a corporation's original capital since they are at all events available to meet the reasonable needs of the business.[12] The sec-

[12] The irrelevance of original capital is further demonstrated by Section 533(b), which provides that the fact that any corporation is a mere holding or investment company shall be *prima facie* evidence of the purpose to avoid the income tax with respect to shareholders. Suppose a corporation engages in no business activity other than to hold appreciated marketable securities and they constitute its original capital and the corporation em-

ond ground is equally erroneous. The statute requires an examination of all of a corporation's assets which are freely available to meet business needs and necessarily assumes that all of such assets could be converted to cash for use in the buiness. However, given the court's finding that the securities "were not available as readily liquid assets" as a result of restrictions imposed by the securities laws (362 F. Supp. at 809, 824), the case can be read to stand for the proposition that non-liquid assets are not available to meet the needs of the business. Where, as here, petitioner's securities were unquestionably marketable and liquid in character, the third ground of *American Trading* has no application.[13]

3. a. Faced with the economic reality that its net liquid financial condition did not justify accumulation of any of its taxable income during the years at issue, petitioner is forced to argue (Br. 9–12) that Section 533(a) is limited to a comparison of a corporation's "earnings and profits" with its reasonable business needs. Since the unrealized appreciation of marketable securities are not included in a corporation's earnings and profits (see Treasury Regulations, Section

ploys securities analysts and clerical personnel. Under these circumstances, exclusion of the marketable securities from consideration in determining whether it has permitted its earnings to accumulate beyond its reasonable business needs would effectively undermine the mandate of Section 533(b).

[13] The fact that the court in *American Trading* excluded the marketable securities altogether—rather than just the amount of their increase in value—shows that it viewed them as non-liquid assets. Thus, the case is not authority for petitioner's argument that only the cost of marketable securities should be considered in determining whether a corporation has permitted its earnings to accumulate beyond the reasonable needs of the business.

1.312–6(b)), petitioner contends that such appreciation should not be taken into account for purposes of the accumulated earnings tax. Since petitioner claims to have purchased its marketable securities with earnings, it argues that the cost of such assets is the proper measure.[14]

Petitioner's argument focuses upon the irrelevant fact that the unrealized appreciation of its marketable securities is not part of its "earnings and profits". We do not contend to the contrary. The question in every accumulated earnings tax case is whether the corporation can justifiably retain its current taxable income rather than distribute it as dividends. It is that income, adjusted to constitute "accumulated taxable income" in Section 535(a), upon which the tax is imposed.

Thus, contrary to petitioner's argument, the Commissioner has not determined that it has accumulated non-existent earnings. To the contrary, the Commissioner has determined that it has freely available assets in excess of the reasonable needs of its business so that its accumulation of its taxable income for the years at issue is unreasonable. The utility of such

[14] Petitioner also argues (Br. 11–12) that its position is buttressed by the fact that neither Section 533(a) nor the Regulations refer to unrealized appreciation. The same may be said of unrealized depreciation which this Court held in *Nat. Grocery Co.* was "evidence to be considered" and the liquid assets test which has been universally applied. Both of these analyses go to an examination of whether a corporation has freely available assets in excess of its reasonable business needs, the critical question under the accumulated earnings tax.

assets in petitioner's business can only be accurately measured at their net realizable value.

The error of petitioner's argument is illustrated by the following example. Suppose a corporation has no prior accumulated earnings and profits which are freely available for use in its business. However, it has earnings and profits for the current year of $1,000,000 and reasonable business needs of $1,000,000. Under those circumstances, the corporation would not be subject to the tax in the absence of any distributions to shareholders.

Suppose further, that one of the shareholders makes a capital contribution of $1,000,000 in cash, which cannot be related to any reasonable business need or to any reasonably anticipated business need. Plainly, the capital contribution is not includable in the corporation's taxable income or in its earnings and profits. See Section 118(a) of the Code. However, the availability of the extra $1,000,000 of cash subjects the accumulated taxable income of the year to the tax since there is no longer any justifiable reason for its retention. The fact that the $1,000,000 capital contribution is not included in the corporation's earnings and profits does not foreclose its consideration in determining whether the corporation is subject to the tax on accumulated earnings.

b. Moreover, petitioner's emphasis upon "earnings and profits" ignores the well-settled liquidity test. As we have pointed out, *supra,* pp. 19–20, 24, the courts have not read Section 533(a) as requiring a rigid mathematical comparison of the corporation's earnings and profits with its reasonable business needs. As

it must, petitioner acknowledges (Br. 10) the correctness of decisions such as *Smoot Sand & Gravel Corp.* v. *Commissioner,* 274 F.2d 495 (C.A. 4), certiorari denied, 363 U.S. 976. Those cases have held that the proper question is whether the corporation has freely available liquid assets in excess of its expected reasonable needs and not whether its *total* accumulated earnings and profits (which may be represented by plant, equipment and inventory) exceeds its reasonable business needs. Indeed, if the rule were otherwise, and petitioner's total earnings and profits were compared to its stipulated reasonable business needs, it is beyond question that the statutory presumption of the tax-avoidance purpose would be operative.[15]

Petitioner cannot have it both ways. If Section 533(a) requires a consideration of its "earnings and profits", then its total earnings and profits must be measured against its reasonable business needs. However, petitioner cannot merge the liquid assets test with the long-rejected "earnings and profits" test and create a hybrid formula which limits consideration of liquid assets to their cost as the measure of accumulated earnings and profits.

The liquid assets test and the accumulated earnings and profits test operate on entirely contrary assump-

[15] Petitioner's earnings and profits as of June 30, 1965 and 1966 were $2,200,184.77 and $2,360,146.52 (A. 70, 91). To the latter amount must be added $262,822.75, an amount attributable to a 10 percent stock dividend which petitioner subtracted from retained earnings and allocated to capital surplus (A. 91). However, a stock dividend does not reduce earnings and profits for tax purposes. See Treasury Regulations, Section 1.312-1(d). As of those dates, petitioner's reasonable business needs were $1,198,309 and $1,455,222 (A. 56).

tions and cannot be so combined. The essence of the liquid assets test is a realistic determination of the resources of a corporation available to meet its reasonable business needs. Thus, if, as petitioner concedes, the economic reality of the liquid assets test is the governing standard, an accurate appraisal of its unneeded liquid assets can be achieved only if its marketable securities are taken into account at their net realizable value.[16]

Contrary to petitioner's further argument (Br. 15–16, 19–20), nothing in *Eisner* v. *Macomber*, 252 U.S. 189, prohibits the annual measure of its marketable securities at their net realizable fair maket value for purposes of determining its liability for the accumulated earnings tax. There, the Court held that a common stock dividend issued by a corporation having only common stock outstanding was not includable in gross income for income tax purposes because there was no "realization" of profits by the stockholder.

As we have pointed out, this case does not involve a tax upon unrealized appreciation of petitioner's marketable securities. To the contrary, that appreciation is simply considered in order to determine whether petitioner has net liquid assets in excess of its reasonable business needs. Once it is determined that a corporation has passed the threshold of permissible accumulations, the tax is presumptively triggered. Pursuant to Section 535(a), the tax is imposed on the "accumulated taxable income" for the years at

[16] Indeed, had petitioner distributed the amount of its "accumulated taxable income" to its shareholders as dividends, it would have totally avoided the imposition of the tax. See Sections 535(a) and 561.

issue which petitioner could not justifiably retain in light of its highly liquid position. Thus, the tax base does not include the unrealized appreciation of the marketable securities.

4. Finally, petitioner urges (Br. 16) that the effect of the decision below "is to force [it] and all other corporations similarly situated to convert their appreciated assets in order to meet their business needs * * *." In its view (Br. 17), "corporate management should be entitled, in the exercise of its business judgment, to finance business needs solely out of earnings and profits without resorting to unrealized appreciation through a forced liquidation of corporate assets and without fear of being subjected to the accumulated earnings tax."

Such broad rhetoric goes far beyond the scope of petitioner's argument. To be sure, if petitioner's marketable securities were excluded from consideration, it would never have to convert them to cash. But even petitioner does not urge such total exclusion.

Even if marketable securities were taken into account at cost, as petitioner argues, situations could arise where the corporation might have to convert such an investment into cash to meet its reasonable business needs if it wished to avoid imposition of the accumulated earnings tax. Thus, whether marketable securities are taken into account at cost or at net realizable value, the conversion of such securities into cash is equally required if the tax is to be avoided.[17] The propriety of the net realizable value

[17] For example, suppose a corporation has $1,000,000 of prior earnings with which it purchases marketable securities unrelated to its business, which are now worth $1,500,000. In the

rule for the marketable securities, which we urge here, is that it unquestionably reflects the liquidity, and relates to the reasonable business needs, of the corporation more accurately than the cost of such assets.

The decision of the court of appeals in this case does not, as petitioner argues, unduly interfere with corporate management's business judgment. Of course, the accumulated earnings tax itself shapes management judgment, and is intended to do so. As a leading text has stated, the tax "involves a hindsight verdict on management's business judgment." Bittker & Eustice, *Federal Income Taxation of Corporations and Shareholders* (1971 ed.), par. 8.01, p. 8-4. Thus, petitioner's objections are essentially directed at the validity of the accumulated earnings tax which it does not challenge and which this Court upheld almost 40 years ago in *Helvering* v. *Nat. Grocery Co.*, 304 U.S. 282.

By requiring the corporation to prove by a preponderance of the evidence that accumulations beyond

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current year, the corporation's current earnings are $600,000 and its reasonable business needs are $1,300,000. If the cost method of valuation were used, the corporation would have "accumulated taxable income" of $300,000 ($600,000 − $1,300,000 + $1,000,000) and be required to distribute that amount or bear an accumulated earnings tax on $300,000. Absent any other assets, and ignoring expenses of sale, a $300,000 distribution would require conversion of a portion of the marketable securities. If the fair market value were used, the corporation's liquid assets ($1,500,000) would exceed its reasonable business needs ($1,300,000) so that no part of the current year's income could be reasonably retained. It would be required to distribute the entire $600,000 of current earnings and also to convert securities. Thus, under both methods, the corporation would have to convert part of its marketable securities to cash.

the reasonable needs of the business were not motivated by tax avoidance (Section 533(a)), Congress established a system under which a corporation must justify its failure to distribute current earnings as dividends. From the corporation's point of view, the imposition of the tax and the statutory presumption may indeed appear to be "an impediment to legitimate business decisions" (Br. 16). But the statutory presumption which operates upon the objective finding of a corporate accumulation beyond the reasonable business needs is necessary if the congressional policy of compelling the distribution of unneeded profits is to be enforced. That policy, we submit, is best served by measuring the corporation's liquid assets at their realistic net realizable value.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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MARCH 1975.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 531. Imposition of Accumulated Earnings Tax.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38½ percent of the accumulated taxable income in excess of $100,000.

SEC. 532. Corporations Subject To Accumulated Earnings Tax.

(a) *General rule.*—The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

* * * * *

SEC. 533. Evidence of Purpose To Avoid Income Tax.

(a) *Unreasonable accumulation determinative of purpose.*—For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to

avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

* * * * *

SEC. 535. Accumulated Taxable Income.

(a) *Definition.*—For purposes of this subtitle, the term "accumulated taxable income" means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) *Adjustments to taxable income.*—For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes.—There shall be allowed as a deduction Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940) and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) *Charitable contributions.*—The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) *Special deductions disallowed.*—The special deductions f r corporations provided in

part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) *Net operating loss.*—The net operating loss deduction provided in section 172 shall not be allowed.

(5) *Capital losses.*—There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a).

(6) *Long-term capital gains.*—There shall be allowed as a deduction the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryback or carryover provided in section 1212) minus the taxes imposed by this subtitle attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between: (A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and (B) such taxes computed for such year without including in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined with regard to the capital loss carryback and carryover provided in section 1212).

(7) *Capital loss.*—No allowance shall be made for the capital loss carryback or carryover provided in section 1212.

(8) *Bank affiliates.*—There shall be allowed the deduction described in section 601 (relating to bank affiliates).

(9) *Distributions of divested stock.*—There shall be allowed as a deduction the amount of any dividend distribution received of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is

made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(10) *Special adjustment on disposition of antitrust stock received as a dividend.*—If (A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied, (B) the amount of the distribution determined under section 301 (f)(2) exceeded the basis of the stock determined under section 301(f)(3), and (C) paragraph (9) did not apply in respect of such distribution, then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.

(c) *Accumulated earnings credit—*

(1) *General rule.*—For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) *Minimum credit.*—The credit allowable under paragraph (1) shall in no case be less than the amount by which $100,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

* * * * *

SEC. 537. Reasonable Needs of the Business.

(a) *General rule.*—For purposes of this part, the term "reasonable needs of the business" includes—

(1) the reasonably anticipated needs of the business

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-22

IVAN ALLEN COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF ON BEHALF OF PETITIONER

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IVAN ALLEN COMPANY,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF ON BEHALF OF PETITIONER

This Reply Brief is filed for two purposes: (1) to correct the Government's misconceptions of Taxpayer's position; and (2) to expose the inconsistency between the Government's position and congressional policy reflected in amendments to the accumulated earnings tax provisions.

THE STATUTE REQUIRES THAT EARNINGS AND PROFITS—NOT LIQUID ASSETS—BE COMPARED WITH BUSINESS NEEDS AND TAXPAYER HAS NEVER "CONCEDED" OTHERWISE

In its Brief the Government states, without citation, that Taxpayer "concedes" that the applicability of Section 533(a) depends upon "an examination of the extent to which its liquid assets exceed its reasonably anticipated business needs" (G. Br. 8). Taxpayer, however, has never made any such concession, and in fact has always maintained that liquid assets are significant for purposes of the accumulated earnings tax "solely as a measure of the corporation's earnings and profits available for use in its business" (P. Br. 11). Taxpayer's position is that the

applicability of Section 533(a) depends upon a determination of whether a corporation's *earnings and profits* reflected in its liquid assets exceed its reasonable business needs.

The Government and Taxpayer are in agreement that the applicability of the Section 533(a) tax avoidance presumption may not be decided by a perfunctory comparison of a corporation's total earnings and profits with its business needs (P. Br. 10; G. Br. 7-8). But this does not mean that the Government may totally ignore the statutory language and substitute liquid assets for earnings and profits in determining whether a tax avoidance purpose will be presumed.[1] The approach that harmonizes the liquid assets analysis with the statutory language of earnings and profits is that urged by Taxpayer—a corporation's liquid assets should be taken into account in the amount at which those assets reflect the corporation's investment of earnings and profits. In this case the amount of Taxpayer's investment of earnings and profits in its liquid assets,

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1. The extent to which the Government's liquidity analysis departs from the statute is well illustrated by the Government's erroneous statement that the statutory presumption would be applicable if Taxpayer's total earnings and profits were compared with its reasonable business needs (G. Br. 30). The Government bases this conclusion on a comparison of Taxpayer's total earnings and profits with its working capital need alone (G. Br. 30 n.15). The proper amount to compare with Taxpayer's *total* accumulated earnings and profits, however, is obviously Taxpayer's *total* business needs, including its business needs represented by its fixed assets. Taxpayer's business needs for fixed assets would add in excess of $1,300,000 (Appx. 112, 118) to its stipulated need for working capital (Appx. 56) for each of the years in question and its total business needs thus exceeded its total earnings and profits for each of such years. Similarly, if this statutory comparison is made in the "short-hand" fashion adopted by *Smoot Sand & Gravel Corp.* v. *Commissioner*, 274 F.2d 495 (4th Cir. 1960), *cert. denied* 362 U.S. 976 (1960), and its progeny, so that only Taxpayer's current business needs are taken into account without regard to its need for fixed assets, the proper comparison is with Taxpayer's earnings and profits available to meet its current needs—the earnings and profits represented by or invested in its liquid assets.

including its marketable securities, is the cost of those assets, not the ephemeral appreciation in market value reflected in one day's stock market quotations.

THE GOVERNMENT'S POSITION, BASED SOLELY ON A TEST OF CORPORATE LIQUIDITY, SUBVERTS CONGRESSIONAL POLICY OF MINIMIZING INTRUSION INTO LEGITIMATE FINANCIAL DECISIONS MADE BY CORPORATE MANAGEMENT

Taxpayer recognizes that an inevitable tension exists between the accumulated earnings tax and the freedom of corporate management to conduct its financial affairs without fear of hindsight verdicts on its business judgment. In proceedings leading to the enactment of the Internal Revenue Code of 1954, Congress was made aware of criticisms of the accumulated earnings tax on this ground, but concluded that the penalty tax should be retained as a "safeguard against tax avoidance." Senate Finance Committee Report, S. Rep. No. 1622, 83rd Cong., 2d Sess. 68 (1954). The response of Congress to these criticisms, however, was to enact several amendments to the 531 tax, all of which reflect a policy of minimizing the degree to which this penalty tax infringes upon legitimate corporate business decisions.[2] For example, the 1954 Code

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2. In this regard, the Senate Finance Committee Report, S. Rep. No. 1622, 83rd Cong., 2d Sess. (1954) states:

> "Numerous complaints have been received that this provision is prejudicial to small business, that it has been applied in an arbitrary manner in many cases, and that it is a constant threat to expanding business enterprises. Fear of the penalty tax is said to result frequently in distribution of funds needed by the corporation for expansion or other valid purposes.
>
> "The House and your committee believe it is necessary to retain the penalty tax on unreasonable accumulations as a safeguard against tax avoidance. However, several amendments have been adopted to minimize the threat to corporations accumulating funds for legitimate business purposes and to restrict the application of the provision in the case of small companies." *Id.* at 68.

provided in Section 535(c)(2) for a minimum credit equal to $60,000 of earnings and profits, which was subsequently raised to $100,000 by the Small Business Tax Revision Act of 1958, 72 Stat. 1606. Certainly if Congress had intended that liquidity, including the unrealized appreciation in asset value, be the primary test of tax avoidance intent, it would not have provided for a credit measured by earnings and profits, which, as the Government concedes, excludes unrealized appreciation (G. Br. 28).[3]

The most onerous intrusion that would result from adoption of the Government's position would be the forced conversion of appreciated assets and the substantial loss that would necessarily attend such conversions (P. Br. 17-18). The Government argues that the forced conversion of assets results from the operation of the 531 tax itself and not from the position urged by the Government (G. Br. 32-33). This contention, however, begs the ultimate question. It is undisputed that the adoption of the Government's position would require a taxpayer (a) to distribute all of its current earnings as dividends and (b) to resort to the unrealized appreciation in its assets to finance its business needs. Taxpayer recognizes that the accumulated earnings tax requires the conversion of liquid assets to the extent necessary to release earnings and profits invested in those assets. A fair application of the statute

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3. Other examples of amendments to the accumulated earnings tax which reflect the Congressional policy of minimizing the conflict between operation of this penalty tax and legitimate corporate business decisions are: the provision that the reasonable needs of a corporation's business shall include "the reasonably anticipated needs of the business" (Section 537); the provision for a procedure to shift the burden of proof to the Government in Tax Court proceedings (Section 534); other revisions to the accumulated earnings credit [Section 535(c)]. Congress recognized that the increased flexibility provided to corporate management by these amendments would cost the Government $10 million in decreased revenues for one year alone. Senate Finance Committee Report, *supra*, at 72.

demands this much, for otherwise the tax could be avoided by any form of investment of earnings and profits. The position urged by the Government, however, would force corporations to convert assets to reach unrealized appreciation as well. Neither the statute nor underlying policy of deterring tax avoidance requires a corporation to finance its business needs by resorting to the unrealized appreciation in its assets, rather than by using its earnings and profits. This point is at the heart of Taxpayer's case, just as it was an essential ground of the decision in *American Trading*.[4]

CONCLUSION

For the reasons stated herein and in Petitioner's previously filed brief on the merits, the judgment below should be reversed.

Respectfully submitted,

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March 27, 1975

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4. 362 F.Supp. 801 (D. Md. 1972), *aff'd per curiam*, 474 F.2d 1341 (4th Cir. 1973). The Government recognizes that this point was an essential ground of the court's holding in *American Trading* (G. Br. 26). A fair reading of that opinion shows that the "distinctions" urged by Amicus Curiae are vastly overstated, and basically irrelevant to the proposition for which it was cited in Taxpayer's Brief. *See* 362 F.Supp. at 808-810.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

IVAN ALLEN CO. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 74–22. Argued April 14–15, 1975—Decided June 26, 1975

In determining the applicability of § 533 (a) of the Internal Revenue Code of 1954—which provides a rebuttable presumption that a corporation that has accumulated earnings "beyond the reasonable needs of the business" did so with "the purpose to avoid the income tax with respect to shareholders"—listed and readily marketable securities owned by the corporation and purchased out of its earnings and profits, are to be taken into account, not at their cost to the corporation, but at their net liquidation value. Pp. 7–18.

493 F. 2d 426, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, WHITE, MARSHALL, and REHNQUIST, JJ., joined. POWELL, J., filed a dissenting opinion, in which DOUGLAS and STEWART, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 74–22

Ivan Allen Company, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 26, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Sections 531–537, inclusive, of the Internal Revenue Code of 1954, as amended, 26 U. S. C. §§ 531–537, constitute Part I of subchapter G of the Income Tax Subtitle. These sections subject most corporations to an "accumulated earnings tax." Section 531 [1] imposes the tax upon the "accumulated taxable income" of every corporation that, as § 532 (a) states,[2] is "formed or

[1] "§ 531. Imposition of accumulated earnings tax.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

"(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

"(2) 38½ percent of the accumulated taxable income in excess of $100,000."

[2] "§ 532. Corporations subject to accumulated earnings tax.

"(a) General rule.

"The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other

availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." And § 533 (a)[3] provides that "the fact that the earnings and profits . . . are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary."[4]

The issue here is whether, in determining the application of § 533 (a), listed and readily marketable securities owned by the corporation and purchased out of its earnings and profits, are to be taken into account at their cost to the corporation or at their net liquidation value, that is, fair market value less the expenses of, and taxes resulting from, their conversion into cash.

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corporation, by permitting earnings and profits to accumulate instead of being divided or distributed."

[3] "§ 533. Evidence of purpose to avoid income tax.

"(a) Unreasonable accumulation determinative of purpose.

"For purpose of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary."

[4] In a proceeding before the United States Tax Court, § 534 allows the taxpayer to shift the burden of proof to the Commissioner of Internal Revenue. Section 535 defines "accumulated taxable income" to mean the corporation's taxable income adjusted as specified; a credit is given for "such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business," with a minimum "lifetime" credit of $100,000 ($150,000 for taxable years beginning after December 31, 1974, Pub. L. 94–12, § 304, — Stat. —). Finally, § 537 provides that the term "reasonable needs of the business" includes "the reasonably anticipated needs of the business."

I

The pertinent facts are admitted by the pleadings or are stipulated:

The petitioner, Ivan Allen Company (the taxpayer), is a Georgia corporation incorporated in 1902 and actively engaged in the business of selling office furniture, equipment, and supplies in the metropolitan Atlanta area. It files its federal income tax returns on the accrual basis and for the fiscal year ended June 30.

For its fiscal years 1965 and 1966, the taxpayer paid in due course the federal corporation income taxes shown on its returns as filed. Taxable income so reported was $341,045.82 for 1965 and $629,512.19 for 1966. App. 59, 84. During fiscal 1965 the taxpayer paid dividends consisting of cash in the amount of $48,945.30 and 870 shares of Xerox Corporation common that had been carried on its books at a cost of $6,564.34. During fiscal 1966 the taxpayer paid cash dividends of $50,267.49; it also declared a 10% stock dividend. *Id.*, at 56. The dividends paid were substantially less than taxable income less federal income taxes for those years.

Throughout fiscal 1965 and 1966, the taxpayer owned various listed and unlisted marketable securities. Prominent among these were listed shares of common stock and listed convertible debentures of Xerox Corporation that, in prior years, had been purchased out of earnings and profits. Specifically, on June 30, 1965, the corporation owned 11,140 shares of Xerox common, with a cost of $116,701 and a then fair market value of $1,573,525, and $30,600 Xerox convertible debentures, with a cost to it of $30,625 and a then fair market value of $48,424. On June 30, 1966, the corporation owned 10,090 shares of Xerox common, with a cost of $102,479 and a then fair market value of $2,479,617, and the same $30,600 con-

vertible debentures, with their cost of $30,625 and a then fair market value of $69,768. *Id.*, at 55.

According to its returns as filed, the taxpayer's undistributed earnings as of June 30, 1965 and June 30, 1966 were $2,200,184.77 and $2,360,146.52, respectively. *Id.*, at 70, 91. The taxpayer points out that the marketable portfolio assets represented an investment, as measured by cost, of less than 7% of its undistributed earnings and of less than 5% of its total assets. Brief for Petitioner 4.

It is also apparent, however, that the Xerox debentures and common shares had proved to be an extraordinarily profitable investment, although, of course, because these securities continued to be retained, the gains thereon were unrealized for federal income tax purposes. The debentures had increased in fair market value more than 50% over cost by the end of June 1965, and more than 100% over cost one year later; the common shares had increased in fair market value more than 13 times their cost by June 30, 1965, and more than 24 times their cost by June 30, 1966.

Throughout fiscal 1965 and 1966 the taxpayer's two major shareholders, Ivan Allen, Sr. and Ivan Allen, Jr., respectively owned 31.20% and 45.46% of the taxpayer's outstanding voting stock. *Id.*, at 78, 104.

Following an examination of the taxpayer's federal income tax returns for fiscal 1965 and 1966, the Commissioner of Internal Revenue determined that the taxpayer had permitted its earnings and profits for each of those years to accumulate beyond the reasonable and reasonably anticipated needs of its business, and that one of the purposes of the accumulation for each year was to avoid income tax with respect to its shareholders. Based upon this determination, the Commissioner assessed against the corporation accumulated earnings taxes of $77,383.98 and $73,131.87 for 1965 and 1966, respectively.

The taxpayer paid these taxes and thereafter timely filed claims for refund. The claims were not allowed, and the taxpayer then instituted this refund suit in the United States District Court for the Northern District of Georgia.

It is agreed that the taxpayer had reasonable business needs for operating capital amounting to $1,198,309 and $1,455,222 at the close of fiscal 1965 and fiscal 1966, respectively. *Id.*, at 56. It is stipulated, in particular, that if the taxpayer's marketable securities are to be taken into account at *cost*, its net liquid assets (current assets less current liabilities), at the end of each of those taxable years, and fully available for use in its business, were then exactly equal to its reasonable business needs for operating capital, that is, the above stated figures of $1,198,309 and $1,455,222. It would follow, accordingly, that the earnings and profits of the two taxable years had *not* been permitted to accumulate beyond the taxpayer's reasonable and reasonably anticipated business needs, within the meaning of § 533 (a), *id.*, at 57, and no accumulated earnings taxes were incurred. It is still further stipulated, however, that if the taxpayer's marketable securities are to be taken into account at *fair market value* (less the cost of converting them into cash), as of the ends of those fiscal years,[5] the taxpayer's net liquid assets would then be $2,235,029 and $3,152,009, respectively. *Id.*, at 56. From this it would follow that the earnings and profits of the two taxable years *had* been permitted to accumulate beyond the taxpayer's rea-

[5] It is stipulated that the cost of converting the taxpayer's marketable securities into cash would have been the sum of a maximum of 6% of the fair market value of the securities (payable as a brokerage commission) and a maximum of 25% of such amount of the fair market value as exceeds the sum of the brokerage commission and the cost of the securities (payable as capital gains taxes). App. 55.

sonable and reasonably anticipated business needs. Then, if those accumulations had been for "the purpose of avoiding the income tax with respect to its shareholders," under § 532 (a), accumulated earnings taxes would be incurred.

The issue, therefore, is clear and precise: whether, for purposes of applying § 533 (a), the taxpayer's readily marketable securities should be taken into account at cost, as the taxpayer contends, or at net liquidation value, as the Government contends.

The District Court held that the taxpayer's readily marketable securities were to be taken into account at cost. Accordingly, it entered judgment for the petitioner-taxpayer. 349 F. Supp. 1075 (ND Ga. 1972). The court observed:

> "Corporate taxpayers should not be penalized for wise investments; they should be allowed to maximize their capital gains tax advantages in accordance with internal business policies and stock market conditions rather than being forced to sell securities which may have a high value on an arbitrarily selected date merely because the unrealized fair market value of the securities on that date would trigger the accumulated earnings tax." *Id.*, at 1077. (Footnote omitted.)

The United States Court of Appeals for the Fifth Circuit reversed. 493 F. 2d 426 (1974). It observed:

> "[T]he securities involved in the case at bar are of such a highly liquid character as to be readily available for business needs that might arise. Thus the appreciated value of these securities should be taken into account when determining whether the corporation has accumulated profits in excess of reasonable business needs.
>
> . . . . . .

> "This decision does not force the corporation to liquidate these securities at any time when a sale would be financially unwise, but only compels the corporation to comply with the proscriptions of the Code and refrain from accumulating excessive earnings and profits." *Id.*, at 428.

The case was remanded, as the parties had agreed, App. 57–58, "for the additional factual determination [under § 532 (a)] of whether one purpose for the accumulation was to avoid income tax on behalf of the shareholders." *Ibid.*

Because this conclusion was claimed by the taxpayer to conflict in principle with *American Trading & Production Corp.* v. *United States,* 362 F. Supp. 801 (Md. 1972), aff'd without published opinion, 474 F. 2d 1341 (CA4 1973),[6] and because of the importance of the issue in the administration of the accumulated earnings tax, we granted certiorari. 419 U. S. 1067 (1974).

II

Under our system of income taxation, corporate earnings are subject to tax at two levels. First, there is the tax imposed upon the income of the corporation. Second, when the corporation, by way of a dividend, distributes its earnings to its shareholders, the distribution is subject to the tax imposed upon the income of the shareholders. Because of the disparity between the corporate tax rates and the higher gradations of the rates on individuals,[7] a corporation may be utilized to reduce signifi-

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[6] American Trading and Production Corporation, pursuant to our Rule 42, was granted permission to file a brief *amicus curiae* in the present case. It asserts that no conflict exists between the decisions in this case and in its own case.

[7] The income tax rates for a corporation are 22% of the first $25,000 of taxable income and 48% of the excess over $25,000. § 11

cantly its shareholders' overall tax liability by accumulating earnings beyond the reasonable needs of the business. Without some method to force the distribution of unneeded corporate earnings, a controlling shareholder would be able to postpone the full impact of income taxes on his share of the corporation's earnings in excess of its needs. See B. Bittker and J. Eustice, Federal Income Taxation of Corporations and Shareholders ¶ 8.01 (3d. ed. 1971); B. Wolfman, Federal Income Taxation of Business Enterprise 864 (1971).

In order to foreclose this possibility of using the corporation as a means of avoiding the income tax on dividends to the shareholders, every revenue act since the adoption of the Sixteenth Amendment in 1913 has imposed a tax upon unnecessary accumulations of corporate earnings effected for the purpose of insulating shareholders.[8]

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of the 1954 Code, 26 U. S. C. § 11. The graduated rates for an individual taxpayer range from 14% to 70%. § 1, 26 U. S. C. § 1.

[8] The accumulated earnings tax originated in § II A, Subdivision 2, of the Tariff Act of October 3, 1913, 38 Stat. 166. This imposed a tax on the shareholders of a corporation "formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed." Accumulations "beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax." *Id.*, at 167. The same provision appeared as § 3 of the Revenue Act of 1916, 39 Stat. 758, and again as § 220 of the Revenue Act of 1918, 40 Stat. 1072 (1919), except that in the 1918 Act the word "fraudulently" was deleted. This change was effected inasmuch as the Senate felt that the former phraseology "has proved to be of little value, because it was necessary to its application that intended fraud on the revenue be established in each case." S. Rep. No. 617, 65th Cong., 3d Sess., 5 (1918).

This pattern of tax on the shareholders was changed with the Revenue Act of 1921, § 220, 42 Stat. 247. The incidence of the tax was shifted from the shareholders to the corporation itself. Judge Learned Hand opined that the change was due to doubts "as to the validity of taxing income which the taxpayers had never received,

The Court has acknowledged the obvious purpose of the accumulation provisions of the successive acts:

> "As the theory of the revenue acts has been to tax corporate profits to the corporation, and their receipt only when distributed to the stockholders, the purpose of the legislation is to compel the company to distribute any profits not needed for the conduct of its business so that, when so distributed, individual stockholders will become liable not only for normal but for surtax on the dividends received." *Helvering* v. *Chicago Stock Yards Co.*, 318 U. S. 693, 699 (1943).

This was reaffirmed in *United States* v. *Donruss Co.*, 393 U. S. 297, 303 (1969).

It is to be noted that the focus and impositions of the accumulated earning tax is upon "accumulated taxable income," § 531. This is defined in § 535 (a) to mean the corporation's "taxable income," as adjusted. The adjustments consist of the various items described in § 535 (b), including federal income tax, the deduction for dividends paid defined in § 561, and the accumulated earnings credit defined in § 535 (c). The adjustments prescribed by §§ 535 (a) and (b) are designed generally to assure that a corporation's "accumulated taxable income" reflects more accurately than "taxable income"

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and in 1921 it was thought safer to tax the company itself." *United Business Corp.* v. *Commissioner*, 62 F. 2d 754, 756 (CA2), cert. denied, 290 U. S. 635 (1933).

Although the statutory language has varied somewhat from time to time, the income tax law, since the change effected by the Revenue Act of 1921, consistently has imposed the tax on the corporation, rather than upon the shareholders. Revenue Act of 1924, § 220, 43 Stat. 277; Revenue Act of 1926, § 220, 44 Stat. 34; Revenue Act of 1928, § 104, 45 Stat. 814; Revenue Act of 1932, § 104, 47 Stat. 195, Revenue Act of 1934, § 102, 48 Stat. 702; Revenue Act of 1936, § 102, 49 Stat. 1676; Revenue Act of 1938, § 102, 52 Stat. 483; Internal Revenue Code of 1939, § 102.

the amount actually available to the corporation for business purposes. This explains the deductions for dividends paid and for federal income taxes; neither of these enters into the computation of taxable income. Obviously, dividends paid and federal income taxes deplete corporate resources and must be recognized if the corporation's economic condition is to be properly perceived. Conversely, § 535 (b)(3) disallows, for example, the deduction, available to a corporation for income tax purposes under § 243, on account of dividends received; dividends received are freely available for use in the corporation's business.

The purport of the accumulated earnings tax structure established by §§ 531–537, therefore, is to determine the corporation's true economic condition before its liability for tax upon "accumulated taxable income" is determined. The tax, although a penalty and therefore to be strictly construed, *Commissioner* v. *Acker*, 361 U. S. 87, 91 (1959), is directed at economic reality.

It is important to emphasize that we are concerned here with a tax on "accumulated taxable income," § 531, and that the tax attaches only when a corporation has permitted "earnings and profits to accumulate instead of being divided or distributed," § 532 (a). What is essential is that there be "income" and "earnings and profits." This at once eliminates, from the measure of the tax itself, any unrealized appreciation in the value of the taxpayer's portfolio securities over cost, for any such unrealized appreciation does not enter into the computation of the corporation's "income" and "earnings and profits."

The corporation's readily marketable portfolio securities and their unrealized appreciation, nonetheless, are of profound importance in making the entirely discrete determination whether the corporation has permitted what, concedely, are earnings and profits to accumulate

beyond its reasonable business needs. If the securities, as here, are readily available as liquid assets, then the recognized earnings and profits that have been accumulated may well have been unnecessarily accumulated, so far as the reasonable needs of the business are concerned. On the other hand, if those portfolio securities are not liquid and are not readily available for the needs of the business, the accumulation of earnings and profits may be viewed in a different light. Upon this analysis, not only is such accumulation as has taken place important, but the liquidity otherwise available to the corporation is highly significant. In any event—and we repeat—the tax is directed at the accumulated taxable income and at earnings and profits. The tax itself is not directed at the unrealized appreciation of the liquid assets in the securities portfolio. The latter becomes important only in measuring reasonableness of accumulation of the earnings and profits that otherwise independently exist. What we look at, then, in order to determine its reasonableness or unreasonableness, in the light of the needs of the business, is any failure on the part of the corporation to distribute the earnings and profits it has.

Accumulation beyond the reasonable needs of the business, by the language of § 533 (a), is "determinative of the purpose" to avoid tax with respect to shareholders unless the corporation proves the contrary by a preponderance of the evidence. The burden of proof, thus, is on the taxpayer. A rebuttable presumption is statutorily imposed. To be sure, we deal here, in a sense, with a state of mind. But it has been said that the statute, without the support of the presumption, would "be practically unenforceable without it." *United Business Corp.* v. *Commissioner*, 62 F. 2d 754, 755 (CA2), cert. denied, 290 U. S. 635 (1933). What is required, then, is a comparison of accumulated earnings and profits with "the reasonable needs of the business."

Business *needs* are critical. And need, plainly, to use mathematical terminology, is a function of a corporation's liquidity, that is, the amount of idle current assets at its disposal. The question, therefore, is not how much capital of all sorts, but how much in the way of quick or liquid assets, it is reasonable to keep on hand for the business. *United Block Co.* v. *Helvering*, 123 F. 2d 704, 705 (CA2 1941), cert. denied, 315 U. S. 812 (1942); *Smoot Sand & Gravel Corp.* v. *Commissioner*, 274 F. 2d 495, 501 (CA4), cert. denied, 362 U. S. 976 (1960) (liquid assets provide "a strong indication" of the purpose of the accumulation); *Electric Regulator Corp.* v. *Commissioner*, 336 F. 2d 339, 334 (CA2 1964); *Novelart Mfg. Co.* v. *Commissioner*, 52 T. C. 794, 806 (1969), aff'd, 434 F. 2d 1011 (CA6 1970), cert. denied, 403 U. S. 918 (1971); *John P. Scripps Newspapers* v. *Commissioner*, 44 T. C. 453, 467 (1965).[9]

The taxpayer itself recognizes, and accepts, the liquidity concept as a basic factor, for it "has agreed that the full amount of its realized earnings invested in its liquid assets—their cost—should be taken into account in determining the applicability of Section 533 (a)." Brief for Petitioner 15. It concedes that if this were not so, "the tax could be avoided by any form of investment of earnings and profits." Reply Brief for Petitioner 5. But the taxpayer would stop at the point of cost and, when it does so, is compelled to compare earnings and profits—not the amount of readily available liquid assets, net—with reasonable business needs.

We disagree with the taxpayer and conclude that cost is not the stopping point; that the application of the accumulated earnings tax, in a given case, may well depend on whether the corporation has available readily

[9] In this case we are concerned only with readily marketable securities. We express no view with respect to items of a different kind, such as inventory or accounts receivable.

marketable portfolio securities; and that the proper measure of those securities, for purposes of the tax, is their net realizable value. Cost of the marketable securities on the assets side of the corporation's balance sheet would appear to be largely an irrelevant gauge of the taxpayer's true financial condition.[10] Certainly, a lender would not evaluate a potential borrower's marketable securities at cost. Realistic financial condition is the focus of the lender's inquiry. It also must be the focus of the Commissioner's inquiry in determining the applicability of the accumulated earnings tax.[11]

This taxpayer's securities, being liquid and readily marketable, clearly were available for the business needs of the corporation, and their fair market value, net, was such that, according to the stipulation, the taxpayer's undistributed earnings and profits for the two fiscal years in question were permitted to accumulate beyond the reasonable and reasonably anticipated needs of the business.

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[10] "The tax should be administered with its purpose in mind at all times, *i. e.*, to prevent accumulations of income by the corporation for the purpose of avoiding the income tax ordinarily incident to the shareholders. It is not intended to serve as an obstacle to sound profit-oriented corporate management. The ultimate goal must be to administer the tax fairly, in light of the *total* economic reality of the corporation. Valuing liquid assets at cost invariably produces a poor and inaccurate picture of the corporate financial position. Adjusted fair market value may have shortcomings of its own, but it does, undeniably, come much closer to furthering the intent of the accumulated earnings tax." Note, Accumulated Earnings: Should Marketable Securities be Valued at Cost or at Fair Market Value in Determining the Reasonableness of Further Accumulations of Income?, 40 Brooklyn L. Rev. 192, 209–210 (1973).

[11] We see little force in any observation that our emphasis on liquid assets means that a corporate taxpayer may avoid the accumulated earnings tax by merely investing in nonliquid assets. If such a step, in a given case, amounted to willful evasion of the accumulated earnings tax, it would be subject to criminal penalties. See, *e. g.*, § 7201, 26 U. S. C. § 7201.

III

Bearing directly upon the issue before us is *Helvering* v. *National Grocery Co.*, 304 U. S. 282 (1938). There the fact situation was the reverse of the present case inasmuch as that taxpayer corporation had unrealized *losses* in the value of marketable securities it was continuing to hold. After the Court upheld the accumulated earnings tax against constitutional attack, *id.*, at 286–290, it observed: "Depreciation in any of the assets is evidence to be considered by the Commissioner and the Board [of Tax Appeals] in determining the issue of fact whether the accumulation of profits was in excess of the reasonable needs of the business." *Id.*, at 291. It went on to hold, however, that such depreciation "does not, as matter of law, preclude a finding that the accumulation of the year's profits was in excess of the reasonable needs of the business." *Ibid.* Indeed, the Court held that the evidence supported the Board's finding that the accumulation of surplus by the taxpayer was to enable its sole shareholder to escape surtaxes. It focused on bonds and stocks held by the corporation, described them as in no way related to the business, and concluded that "there was no need of accumulating any part of the year's earnings for the purpose of financing the business." *Id.*, at 291–292. That language forecloses the present taxpayer's case.

The precedent of *National Grocery* has been applied in accumulated earnings tax cases, with courts taking into account the fair market value of liquid, appreciated securities. *Battelstein Investment Co.* v. *United States*, 442 F. 2d 87, 89 (CA5 1971); *Cheyenne Newspapers, Inc.* v. *Commissioner*, 494 F. 2d 429, 434–435 (CA10 1974); *Henry Van Hummell, Inc.* v. *Commissioner*, 23 T. C. M. 1765, 1779 (1964), aff'd, 364 F. 2d 746 (CA10 1966), cert. denied, 386 U. S. 956 (1967); *Golconda Min-*

ing Corp. v. *Commissioner*, 58 T. C. 139, supplemental opinion 58 T. C. 736, 737–739 (1972), rev'd on other grounds, 507 F. 2d 594 (CA9 1974); *Ready Paving & Construction Co.* v. *Commissioner*, 61 T. C. 826, 840–841 (1974). But see *Harry A. Koch Co.* v. *Vinal*, 228 F. Supp. 782, 784 (Neb. 1964).

American Trading & Production Corp. v. *United States, supra,* which the taxpayer continues to assert is in conflict with the present case, deserves mention. The taxpayer there had accumulated earnings and profits of something less than $10 million. Its anticipated business needs were about $12 million. But it owned stocks, primarily oil shares, having a total cost of $5,593,319 and an aggregate current market value in excess of $100 million. The District Court excluded these stocks in making its determination whether earnings had accumulated in excess of reasonable business needs. It did so on several grounds: that the shares constituted "original capital," a term the court used in the sense that the stocks "were properly held and retained as an integral part of its business and were utilized . . . as a base for borrowings for the needs of other parts of its business," 362 F. Supp., at 810; that the statute was not intended to require the conversion of assets of that kind into cash in order to meet business needs, even though that capital "has explosively increased in value," *id.*, at 808; and that "there was substantial evidence" that the stocks "were not readily saleable," *id.*, at 809.

Whatever may be the merit or demerit of the other grounds asserted by the District Court in *American Trading*—and we express no view thereon—we are satisfied that the court's determination as to the absence of ready saleability, under all the circumstances, provides a sufficient point of distinction of that case from this one, so that it provides meager, if any, contrary precedent of substance to our conclusion here.

IV

The arguments advanced by the taxpayer do not persuade us:

1. The taxpayer, of course, quite correctly insists that unrealized appreciation of portfolio securities does not enter into the determination of "earnings and profits," within the meaning of § 533 (a). As noted above, we agree. The Government does not contend otherwise. It does not follow, however, that unrealized appreciation is never to be taken into account for purposes of the accumulated earnings tax.

As has been pointed out, the tax is imposed only upon accumulated taxable income, and this is defined to mean taxable income as adjusted by factors that have been described. The question is not whether unrealized appreciation enters into the determination of earnings and profits, which it does not, but whether the accumulated taxable income, in the determination of which earnings and profits have entered, justifiably may be retained rather than distributed as dividends. The tax focuses, therefore, on current income and its retention or distribution. If the corporation has freely available liquid assets in excess of its reasonable business needs, then accumulation of taxable income may be unreasonable and the tax may attach. Utilizable availability of the portfolio assets is measured realistically only at net realizable value. The fact that this value is not included in earnings and profits does not foreclose its being considered in determining whether the corporation is subject to the accumulated earnings tax.

2. We see nothing in the "realization of income" concept of *Eisner* v. *Macomber*, 252 U. S. 189 (1920), that has significance for the issue presently under consideration. There the Court held that a dividend of common shares issued by a corporation having only common out-

standing was not includable in the shareholder's gross income for income tax purposes. The decision may have prompted the shift, noted above and effected by the Revenue Act of 1921, of the incidence of the accumulated earnings tax from the shareholders to the corporation. The case also emphasizes the realization of income with respect to a tax on the shareholder. We note again, however, that the accumulated earnings tax is not on unrealized appreciation of the portfolio securities. It rests upon, and only upon, the corporation's current taxable income adjusted to constitute "accumulated taxable income."

3. The taxpayer also argues that the effect of the Court of Appeals decision is to force the taxpayer to convert its appreciated assets in order to meet its business needs. It suggests that management should be entitled to finance business needs without resorting to unrealized appreciation. The argument, plainly, goes too far. On the taxpayer's own theory that marketable securities may be taken into account at their cost, a situation easily may be imagined where some conversion into cash becomes necessary, if the corporation is to avoid the accumulated earnings tax.

That our decision does not interfere with corporate management's exercise of sound business judgment, and that it does not amount to a dictation to management as to when appreciated assets are to be liquidated, was aptly answered by the Court of Appeals:

> "This decision does not force the corporation to liquidate these securities at any time when a sale would be financially unwise, but only compels the corporation to comply with the proscriptions of the Code and refrain from accumulating excessive earnings and profits. That taxpayer, as a consequence of its own sound judgment in making profitable invest-

> ments, must sell, exchange or distribute to the shareholders assets in order to avoid an excessive accumulation of earnings and thus comply with the Code's requirements is no justification for precluding its application." 493 F. 2d, at 428.

We might add that the existence of the Code's provisions for the accumulated earnings tax, of course, will affect management's decision. So, too, does the very existence of the corporate income tax itself. In this respect, the one is no more offensive than the other. Astute management in these tax-conscious days is not that helpless, and shrinkage, upon liquidation, of one-fourth of the appreciation hardly equates with loss. Such business decision as is necessitated was expressly intended by the Congress. All that is required is the disgorging, at the most, of the taxable year's "accumulated taxable income."

4. It is no answer to suggest that our decision here may conflict with standard accounting practice. The Court has not hesitated to apply congressional policy underlying a revenue statute even when it does conflict with an established accounting practice. See, *e. g., Schlude* v. *Commissioner,* 372 U. S. 128 (1963); *American Automobile Assn.* v. *United States,* 367 U. S. 687, 692–694 (1961). It is of some interest that the taxpayer itself, for the tax years under consideration, reflected the market value as well as the cost of its marketable securities on its balance sheets. App. 112, 118. This appears to be in line with presently accepted practice. See R. Kester, Advanced Accounting 117–118, 122–124 (4th ed., 1946).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 74-22

Ivan Allen Company, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 26, 1975]

MR. JUSTICE POWELL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART join, dissenting.

The Court's decision departs significantly from the relevant statutory language, creates a rule of additional tax liability that places business management in a perilous position, and vests in the Internal Revenue Service an inappropriate degree of discretion in administering a punitive statute. I therefore dissent.

I

Petitioner, a corporation with 34 stockholders, is engaged in selling office supplies and equipment. In the late 1950's, because petitioner was a retail outlet for equipment of the Xerox Corporation, it invested $147,000 of its earnings and profits in securities of Xerox. The market value of that investment increased substantially over the years, and by the end of petitioner's 1965 and 1966 tax years the unrealized market appreciation[1] of those securities approximated $1,475,000 and $2,416,000 respectively.[2] For the purpose of determin-

[1] Unrealized appreciation is the difference between the cost basis of a retained asset and its market or appraised value, where the latter exceeds cost.

[2] The cost basis for petitioner's Xerox securities for the 1966 tax year was some $14,000 less than for 1965, apparently reflecting the payment as a dividend of 870 shares of Xerox stock in 1965. The

ing the applicability of the additional penalty tax liability under § 531, the Commissioner valued these securities at their year-end market price. He thereupon assessed the tax here at issue.

The question is one of statutory construction: In determining whether a corporation has accumulated earnings and profits in excess of reasonable business needs within the meaning of § 533 (a), are assets purchased with earnings and profits to be valued at the amount invested in them—their cost—or at their market price,[2] which reflects both cost and unrealized appreciation? The question has not heretofore been decided by this Court and has been considered infrequently by other federal courts.

II

I address first the statutory language, which in my view in controlling. Section 531 imposes a tax "[i]n addition to other taxes imposed by this chapter . . . on the accumulated taxable income . . . of every corporation" identified by § 532. Section 532 makes the § 531 tax applicable to corporations "formed or availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being divided or distributed." If "the earnings and profits of the corporation are per-

"appreciation" figures used herein come from Petitioner's Brief and vary somewhat from the figures used by the Government, but the differences are insignificant in the context of this case. Rounded figures are used throughout this opinion.

[2] The Court refers to net liquidation value, which reflects the asset's current market price less the costs and expenses attendant to its liquidation. The Court thus seeks to identify the sum that would be made available by a hypothetical sale of the asset in question, although nothing in the statute requires such a liquidation. For the purpose of discussion, I will refer simply to market value or market price.

mitted to accumulate" beyond its reasonable needs, § 533 establishes a rebuttable presumption that the corporation is one "formed or availed of for the purpose of avoiding the income tax" and that it is therefore liable for the § 531 tax.

The central element of this statutory scheme is the unreasonable accumulation of earnings and profits beyond the corporation's reasonable needs. It is stipulated in this case that there is no unreasonable accumulation and no additional tax unless the unrealized appreciation of the Xerox securities is *added* to petitioner's actual accumulated earnings and profits (*i. e.*, to its earned surplus account).[4] Under normal concepts of tax law and accounting the Government's position is therefore untenable on its face. Unrealized appreciation of assets is not considered in computing ordinary corporate or individual taxable income. Indeed, sound accounting practice requires that assets be recorded and carried at cost,[5] and this requirement is enforced with respect to filings with the SEC. Similarly, if assets of a corporation are distributed to shareholders "in kind," the com-

[4] There may be some ambiguity in the critical language stating the Court's theory of the case, *ante*, at 9, 10, as to whether it intends the term "accumulated" to refer only to earnings and profits accumulated in the tax year in question or to all accumulated and undistributed earnings as shown by the corporation's earned surplus account. I assume the Court refers to the latter, as the statutory language and purpose contemplate consideration of the total accumulation in determining whether the retention of earnings and profits of a given year has been in excess of the amount justified by reasonable business needs.

[5] It is not unusual, of course, for a corporation also to show parenthetically on its balance sheet, or in a footnote thereto, the market price of assets when that figure can be ascertained readily. But unrealized appreciated value, whether based on market price or an appraisal of the asset, is normally not included in the sum of a corporation's assets or in its surplus account on the liability side of its balance sheet.

pany is credited for a dividend payment only on the basis of the cost of those assets, not their appreciated value.

In view of this unanimity of law and practice, what theory is devised by the Government and the Court today as justification for a different rule for this penalty tax? I look to the Court's opinion for the answer. It is conceded that "unrealized appreciation does not enter into the corporation's . . . [accumulated] 'earnings and profits.'" *Ante,* at 10. Nevertheless, the Court holds that such appreciation "becomes important" and must be taken into account "in measuring the reasonableness" of such accumulation. *Id.,* at 11. In short, the Court construes the statute to mean that although unrealized appreciation is not includable in computing earnings and profits, it is includable in determining whether earnings and profits have been accumulated unreasonably.

The statute provides no basis whatever for this distinction. According to its own terms, selected with full knowledge of accepted tax and accounting principles, the penalty tax applies only if there is an unreasonable accumulation of *earnings and profits;* the statute contains no reference to the addition of unrealized appreciation to the accumulated earnings and profits which constitute the only basis for imposing the tax. Nor does the history or purpose of the statute support the "add on" of an unrealized increment of value conceded by the Court to be neither earnings nor profits. By authorizing this "add on," the Court's decision effectively converts the tax on excessive accumulation of earnings and profits to a tax on the retention of certain assets that appreciate in value. Although current accumulated taxable income remains the measure of the tax, its application in many cases will be controlled simply by the existence of unrealized appreciation in the value of these assets.

The purpose of the statute, as the Court states, is "to force the distribution of unneeded corporate earnings," *ante*, at 8. Such a distribution is accomplished by the payment of dividends, which normally are declared and paid only out of current earnings or earned surplus, determined in accordance with sound accounting practice. Absent authorization in a statute or corporate charter, corporate directors who pay dividends from unrealized appreciation risk personal liability at the suit of stockholders or injured creditors.[6]

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[6] See 11 W. Fletcher, Cyclopedia of the Law of Private Corporations §§ 5329, 5329.1, 5335, 5335.1 (1971). Some States have statutes expressly prohibiting recognition of unrealized appreciation as a source upon which a corporation can rely in determining the amount of a dividend that legally can be paid. *E. g.*, Calif. Corp. Law § 1502, 1505 (1947); Ind. Gen. Corp. Act § 25–23–11 (a) (1971). Other States have statutes allowing limited recognition of unrealized appreciation. *E. g.*, Minn. Stat. Ann. § 301.22 (1) (a corporation may take into account appreciation of "securities having a readily ascertainable market value"; otherwise, unrealized appreciation may not be counted in computing earnings available for dividends); Ohio Rev. Code § 1701.33 (A) (Supp. 1973) (allows only share dividends to be paid from unrealized appreciation). The decisional law of States lacking precise statutory guidance generally prohibits reliance on unrealized appreciation. 11 W. Fletcher, *supra*, at 679; H. Henn, Handbook of the Law of Corporations and Other Business Enterprises § 320, at 652–653 (1970).

Georgia's law follows the Model Business Corporation Act, allowing payment of cash or property dividends only out of earned surplus or current earnings. Ga. Code Ann. § 22–511 (a)(1); Model Bus. Corp. Act § 45 (a). Share dividends may be paid out of capital surplus on certain conditions, Ga. Code Ann. § 22–511 (a)(4); Model Bus. Corp. Act § 45 (d), and stricter conditions govern the declaration of cash or property dividends out of capital surplus. Ga. Code Ann. § 22–512; Model Bus. Corp. Act § 46. Commentators have suggested that under the Model Act a corporation could revalue its assets, creating capital surplus out of the unrealized appreciation, and then pay dividends out of the capital

III

The plain language of the Code resolves this case for me. But even if the statute could be thought ambiguous on the point, the tax is, as the Court concedes, a "penalty and therefore [must] be strictly construed . . . ." *Ante*, at 10. See *Commissioner* v. *Acker*, 361 U. S. 87, 91 (1959). This means, at a minimum, that doubts and ambiguities must be resolved in favor of a fair and equitable construction that is as free from the hazards of uncertainty as the statutory language and purpose will allow. It seems to me that the Court's opinion ignores the meaning of this canon of construction. Rather than construe the statute narrowly, today's decision extends the presumptive reach of this tax beyond the language of the Code and creates a number of perplexing uncertainties.

Businesses normally are conducted, and management decisions made, on the basis of financial information that is maintained in accordance with sound accounting practice. The most elementary principle of accounting practice is that assets are recorded at cost. This is true with respect to the computation of earnings and profits, payment of ordinary corporate taxes, determination of dividend policy, and reporting to stockholders, the SEC, and other regulatory agencies. Corporate books and records are audited only on that basis. Whatever may be said for the Court's view of the "unreality"

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surplus, but that course of action is considered quite risky for the directors. Bugge, Unrealized Appreciation as a Source of Shareholder Distributions Under the Wisconsin Business Corporation Law, 1964 Wisc. L. Rev. 292, 300–304, 312–313; Hackney, The Financial Provisions of the Model Business Corporation Act, 70 Harv. L. Rev. 1357, 1377–1381 (1957). Under Georgia law, Ga. Code Ann. § 22–715 (c), as under the Model Act § 48, a director is not liable for an illegal dividend distribution if in computing the amount available for dividends he considers the corporate assets at their "book value."

of adhering to the principles of sound accounting practice, *ante*, at 13, those principles are the best system yet devised for guiding management, informing shareholders, and determining tax liability. They have the not inconsiderable virtues of consistency, regularity, and certainty—virtues that also assure fairness and reasonable predictability in the Commissioner's administration of this penalty tax.

The Court today abandons accounting principles confirmed by the wisdom of business experience and announces a new rule with far-reaching consequences. In my view, this rule will create uncertainty and open wide possibilities for unfairness.

A

Both taxpayers and the Government know what is meant by "cost basis," and a corporation's earned surplus account, which reflects accumulated earnings and profits from which dividends normally are paid, is an established accounting fact. There is no comparable certainty or dependability in the rule devised by the Court:

> "Cost of the marketable securities on the assets side of the corporation's balance sheet would appear largely an irrelevant gauge of the taxpayer's *true financial condition*. . . . *Realistic financial condition* is the focus . . . of the Commissioner's inquiry in determining the applicability of the accumulated earnings tax." *Ante*, at 13 (emphasis added).

In this case, involving marketable securities, the computation of the true value for purposes of the tax appears at first blush to present no serious problem of uncertainty. The Court simply equates market price at the end of the tax year with true value, and adds the resulting excess over cost to the book value of the securities.

Apart from the questionable assumption that market quotations represent the true value of a retained common stock, the Court's new formulation poses perplexing definitional questions for management.

An initial uncertainty results from the Court's ambiguous use of the term "securities." As defined in the Securities Acts of 1933 and 1934, the term is quite comprehensive.[7] Even so, its meaning is not always self-evident, as can be seen by examining some of the extensive litigation on this question. See, *e. g., 1050 Tenants Corp.* v. *Jakobson*, 503 F. 2d 1375 (CA2 1974); *SEC* v. *Glenn W. Turner Enterprises, Inc.*, 474 F. 2d 476 (CA9), cert. denied, 414 U. S. 821 (1973); *Lehigh Valley Trust Co.* v. *Central National Bank of Jacksonville*, 409 F. 2d 989 (CA5 1969).

In addition, uncertainties will arise in ascertaining whether the asset is sufficiently "readily marketable" to satisfy the Court's test. The Court attaches significance to whether the security is "listed" on a stock exchange. It is indeed true that the great majority of common stocks listed on the New York Stock Exchange are readily marketable, unless the number of shares to be sold is too large for the market to absorb. The same cannot be said, however, of all bonds listed on that exchange. Moreover, there are other exchanges on which securities are listed and traded: the American Stock Exchange, Over-The-Counter, and scores of local exchanges. While many securities traded on these exchanges may be "readily marketable," perhaps the majority could not

[7] Among other things, the term "security" includes stocks, bonds, debentures, certificates of interest or participation in profit-sharing agreements, collateral trust certificates, investment contracts, voting-trust certificates, fractional undivided interests in oil, gas, or other mineral rights, or "in general, any interest or instrument commonly known as a 'security . . . .'" 15 U. S. C. § 77b (1). See *United Housing Foundation, Inc.* v. *Forman*, — U. S. — (1975).

fairly be so characterized. In countless situations corporate management will be unable to determine, short of attempting to sell the security, whether it is "readily marketable" or not.

B

The uncertainty engendered by today's opinion will not be limited to its undifferentiated treatment of marketable securities. A more fundamental question arising from the rationale of the Court's decision is whether the test of "true" or "realistic" financial condition will be applied to other assets. Nothing in the relevant statutory provisions suggests a distinction between securities and other assets, or even between assets with varying degrees of marketability. The Court nevertheless appears to read into the statutes a distinction based on "liquidity," at various points referring interchangeably to "readily marketable securities," "current assets," and "quick or liquid assets." *Ante,* at 6, 12. Although the Court's holding is limited in this case to readily marketable securities, see *ante,* at 12 n. 9, its rationale is not so easily contained.

The Court states categorically that the "focus" of the Commissioner's inquiry, in determining the application of this tax, must be on what it calls true or realistic financial condition, *ante,* at 13. In view of this postulation, and the absence of any distinction in the statute among types of assets, is the Commissioner now free to include in his computation the unrealized appreciation of all corporate assets? Once cost basis is abandoned, and "realistic" value becomes the standard, the uncertainties confronting prudent management in many cases will be profoundly disquieting. To be sure, read narrowly, the Court's decision applies only to readily marketable securities, with emphasis on "liquidity." But this is another relative term, depending on the nature of

the asset and the uncertainties of market conditions at the time.

The potential sweep of the Court's decision is forecast by the response of government counsel to questions about unrealized appreciation on real estate. At one point counsel stated that real estate would not be sufficiently liquid to be includable at market value in the tax calculation, Transcript of Oral Argument, at 36, but he later qualified this statement by suggesting that land might be includable if it could be established that it was readily marketable, *id.*, at 42.[8]

The types of assets in which corporations lawfully may invest earnings and profits embrace the total range of property interests. They include, to name only a few examples, unimproved real estate within the anticipated growth pattern of a major urban area, improved real estate, unlisted securities of growth corporations that have not "gone public," undivided interests in oil or mining ventures, and even objects of art. At various times and depending upon conditions, any of these assets may be viewed as—and in fact may be—readily marketable and therefore "liquid." The unrealized appreciation of such assets may well bear upon the realistic financial condition of a corporation, however it is defined. In light of these economic facts, the sweep of today's

[8] The following hypothetical suggests the difficulty of application of today's decision. If petitioner had invested the same $147,000 of earnings in southern pine timberlands, and if by the end of the tax years in question the unrealized appreciation in value of these lands was precisely the same $1,475,000 and $2,416,000, respectively, as was the appreciation of the Xerox stock here at issue, would the Commissioner have been entitled to take that unrealized appreciation into account? In many instances, well-situated timberlands have appreciated in value as much or more than most marketable securities. Such lands are not carried on corporate balance sheets as current assets, and yet experience indicates that often growing timber and timberlands are highly marketable.

decision presents problems both for corporate taxpayers and the Government.[9]

C

I further think that the Court's decision to attach significant tax consequences to the market price of a volatile stock at a particular point in time will lead to unfairness in the application of the accumulated earnings tax. The Court's net liquidation formulation seems to assume, and nothing in the opinion dispels this assumption, that readily marketable assets are to be valued as of the end of the tax year in question. Moreover, the Court apparently would treat all marketable securities the same for the purpose of this valuation. No distinction is drawn or even suggested among the wide variety of securities that are held as corporate assets.

The market price of a short-term treasury note, at most only fractionally different from its cost basis, would

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[9] I hardly think that the Court's brandishment of the threat of criminal liability for willful tax evasion through investment in a particular type of asset, see *ante*, at 13 n. 11, will suffice to deter future investment decisions made with the intention of avoiding the pitfalls of this decision. I cannot agree with the Court's suggestion that this motivation would convert an otherwise legitimate investment choice into a criminal offense. Corporate management considers the potential tax implications of countless business decisions and might reasonably be expected to assess the possible impact of a choice between investing in nonliquid or liquid assets on its potential future liability for the accumulated earnings tax.

"The fact that the incidences of income taxation may have been taken into account by arranging matters one way rather than another, so long as the way chosen was the way the law allows, does not make a transaction something else than it truly is. . . ." *Commissioner* v. *Wodehouse*, 337 U. S. 369, 410 (1919) (Frankfurter, J., dissenting).

This is especially true where questions of criminal liability are involved.

represent its value under any test. But few financial analysts or economists would say that the market quotation of a common stock at any particular time necessarily reflects its "true" or "realistic" value *unless* the stock is sold at that price.[10] Over a sufficiently long term, the market price of a common stock will reflect, and vary with, the fundamental strength of the issuing corporation's balance sheet, its earnings record and its future earnings prospects. But a variety of other factors also affect market price, producing wide swings that do not necessarily correspond to those economic facts. These factors include current conditions of supply and demand in the stock market, immediate confidence in the market in general and in the overall state of the economy, international stability or instability, notions of what is fashionable to buy at a particular time, and a variety of other intangibles. The extent to which the market prices of common stocks fluctuate, often without regard to any

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[10] The following swings in the value of Xerox stock illustrate the point: on May 16, 1975, the high was 87 and the low 78½. If petitioner continued to own 10,000 shares, its potentially available source of funds would have shrunk by $85,000 in a single day. In the month of August 1974, Xerox varied in market price from 98 to a low of 74¼, a 24.2% swing. Again, assuming a holding of 10,000 shares, the owner would have suffered paper "losses" in that one month of approximately $237,500, or about one-fourth of market value. Considering the entire calendar year of 1965, Xerox sold as high as 71 and as low as 31, a variation on the down side of 55.9% and on the up side of 120%. In dollars, a person who bought 10,000 shares of Xerox in 1965 at its lowest and sold at the highest price would have enjoyed a pretax profit of $400,000. But in 1974, in which the high was 127 and the low 49, a taxpayer whose Xerox stock was assessed on the day of the market's peak, and who continued to own it, would find itself at the later date having "lost" 61% of what this Court deems the "realistic" or "true" value of the investment. See Appendix A–1, *infra*.

concept of "real" value, is illustrated by the tables in the Appendix to this opinion.

Bearing in mind the actual variations in the price of Xerox stock, can it be said that its market price at any given time fairly represents its true or realistic value for the purpose of determining whether earnings and profits have been accumulated unreasonably? The negative answer to this question is indicated, at least for me, by the following hypothetical. In 1965, one of the tax years at issue in this case, the highest price at which Xerox sold was $71 and the lowest was $31. If two competing corporations each owned 10,000 shares of Xerox stock purchased prior to 1965 at the identical price of $31 per share, and corporation A's tax year ended on the day that Xerox hit $71, while corporation B's tax year ended on the day it hit $31, corporation A would have had an unrealized appreciation of $400,000 whereas corporation B would have had none.

By departing from the cost-basis standard of sound accounting practice, and compelling reliance on an isolated market price of a retained common stock, the Court itself departs from its avowed goal of "economic reality," *ante*, at 10. An average-price range at which the stock might have been sold over a relatively long period might produce a more equitable result in some cases. It would not, however, alleviate the basic problem inherent in the Court's formulation. The taxpayer still could be penalized for having failed to consider, in planning future business needs, the highly ephemeral "value" of unrealized appreciation on common stock. The effect of today's decision is to hold business management accountable for unrealized appreciation as if it were cash in hand, probably forcing corporate management in many cases to liquidate securities that otherwise it would have elected to retain.[11]

[11] The wide gyrations in value of some of the equity securities listed in the appendix to this opinion illustrate the point. For

Management decisions during the course of a year, including decisions whether and when to pay dividends and in what amounts, cannot be made intelligently on the basis of an asset so volatile that it may depreciate in market value as much as 8% in a single day and 61% in a year. Uncertainty of this magnitude could only be avoided by liquidation of assets that have appreciated in value. I find nothing in the language or purpose of this tax that justifies such detrimental interference with sound corporate management.

IV

The Court places major reliance on *Helvering* v. *National Grocery Co.*, 304 U. S. 282 (1937), finding that that opinion "forecloses the present taxpayer's case." *Ante*, at 14. I respectfully suggest that the Court's interpretation of *National Grocery* will not withstand close scrutiny of the facts or its actual holding.[12]

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example, on May 16, 1975, the common stock of the Falstaff Corporation fell 20.6% in a single day. The Court's opinion assumes that corporate management should plan to satisfy future business needs from the unrealized appreciation in value of such securities at a given point in time. The instability of market prices of common stocks suggests that this assumption is unsound.

[12] The basic facts of *National Grocery* are not fully revealed in this Court's opinion, but must be obtained from the opinions of the Board of Tax Appeals, 35 B. T. A. 163 (1936), the Court of Appeals for the Third Circuit, 92 F. 2d 931 (1937), and the briefs filed in this Court by the parties. In addition to those set forth above, the following are relevant: the decline in market value of the taxpayer's listed securities in the fiscal year aggregated $943,500; the $2,000,000 shrinkage figure mentioned by this Court included, in addition, the taxpayer's attempted elimination of $1,068,000 cost value of bank stocks claimed to be wholly unmarketable. Brief for Respondent, in *National Grocery Co.* v. *Commissioner*, at 34, 35. In addition, as appears from the opinion of the Court of Appeals, National Grocery also claimed "that [its] merchandise shrank in value well on to a quarter million dollars, and real estate declined in value

National Grocery, its stock owned by a sole shareholder, was organized in 1908 with an authorized capital of $5,000; its business prospered over the years, so that by January 31, 1931 (the taxable year there at issue), its earned surplus was $7,939,000. These earnings notwithstanding, National Grocery's "only dividends . . . ever paid . . . up to January 31, 1931, were a dividend of $25,000 in 1917 and a dividend of like amount in 1918." *National Grocery Co.* v. *Commissioner*, 35 B. T. A. 163, 164 (1936). The corporation's net profits for the four fiscal years preceding fiscal year 1931, all of which were retained rather than distributed, averaged in excess of $800,000 annually. National Grocery earned some $864,000 during the tax year in question, none of which was distributed as a dividend. Addressing the taxpayer's attempt to offset the depreciation of some of its assets, the Court noted:

> "Depreciation in any of the assets is evidence to be considered by the Commissioner and the Board in determining the issue of fact whether the accumulation of profits was in excess of the reasonable needs of the business. But obviously depreciation in the market value of securities which the corporation continues to hold does not, as a matter of law, preclude a finding that the accumulation of the year's profits was in excess of the reasonable needs of the business." 304 U. S., at 291.

When *National Grocery* is read in light of the facts and issues there presented—as it must be in order to understand the Court's passing statement—it is readily apparent that the holding in that case does not govern

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$125,000." *National Grocery Co.* v. *Commissioner*, 92 F. 2d, at 933. All of this alleged depreciation and shrinkage was claimed to have occurred in the taxable year, and was sought to be offset against net earnings for that year.

the issue here. The central issue there was the definition of "gains and profits": specifically, whether the term "gains," a term replaced in the present statute by "earnings," qualified the meaning of "profits." The Court apparently felt justified in devoting little attention to the issue, for it was plain in light of the huge accumulation of earnings over time that the taxpayer would be liable even if it were allowed to offset the asserted depreciation. Finally, it is significant that National Grocery's "accumulation of earnings" was computed on the basis of book value or cost. Indeed, all of the relevant figures were so computed, including the $7,393,000 surplus that had been accumulated over time.

I therefore find no justification for the view that *National Grocery* forecloses consideration of the question here presented. Moreover, even if I could agree with the Court's interpretation of that case, I would refuse to follow a rationale so plainly at odds with the statutory language and so conducive to uncertainty and unfairness.

V

The uncertainties the Court has now read into this penal statute correspondingly vest in the Internal Revenue Service an inappropriate latitude in its administration. In light of today's decision, the Commissioner will have wide and virtually uncontrolled discretion in deciding which corporations will be subject to additional taxation, or at least in deciding which will be required to rebut the presumption that earnings were accumulated to evade shareholder tax liability. Until today's decision, management, in trying to anticipate what a Commissioner would deem an unreasonable accumulation, at least could rely on the corporation's earned surplus account as establishing its accumulated earnings and profits. Now this dependable benchmark has become an

"irrelevant gauge" of a corporation's "true financial condition," and in many cases management can only speculate about the Commissioner's future determination of values nowhere reflected in the corporation's books. As commentators have noted, see B. Bittker & J. Eustice, Federal Income Taxation of Corporations and Shareholders, ¶ 8.01 (3d ed. 1971), the decision to impose the accumulated earnings tax inevitably involves "a hindsight verdict on management's business judgment." The Court's decision does not impose identifiable standards on the Commissioner's exercise of this extraordinary "hindsight" authority, but leaves it open-ended. It is unlikely, to say the least, that Congress intended to leave small and medium-sized businesses—those most often the target of this tax—exposed to this degree of administrative discretion in the imposition of a potentially heavy penalty tax.

[Appendix starts on page 19.]

APPENDIX A–1

The volatility and transient character of market prices of a common stock are illustrated by the following tables:*

TABLE I

XEROX CORPORATION COMMON STOCK**

	High	Low	% Change High to Low
Fluctuations in a single day:			
June 14, 1965.....	48.25	45	− 6.7
May 16, 1975.....	87	78.50	− 8.8
Fluctuations in a single month:			
November 1965.....	66.50	57.50	−13.6
August 1974.....	98	74.25	−24.2
Fluctuations in a single year:			
1965.....	71	31	−55.9
1974.....	127	49	−61.50

*Except as noted, all data in this Appendix was taken from published New York Stock Exchange Quotations. The information presented here is selective and presented for illustrative purposes.

**All Xerox quotations take into account the 1965 three-for-one split.

APPENDIX A–2

TABLE II

SELECTED STOCK RANGES DURING 1965*

Name of Company	High	Low	Close	Change Open to Close	Percent Change High to Low	Percent Change Open to Close
Chrysler Corp.	62¼	41⅝	53⅜	− 7⅝	−33.1%	− 12.5%
Fairchild Camera	165¼	27¼	150½	+123	−83.5%	+447.3%
Financial Federation	37¼	19⅝	23⅞	− 13⅛	−47.3%	− 35.5%
General Dynamics	68¼	35	56¾	+ 21¾	−48.7%	+ 62.1%
W. T. Grant	62¼	35⅞	62¼	+ 25¾	−42.4%	+ 70.5%
Grolier, Inc.	60½	37	55¾	—	−38.8%	—
Gulf & Western Ind.	102	31⅛	92⅞	+ 61⅛	−69.5%	+192.5%
KLM Airlines	81⅞	19¾	79	+ 59	−75.9%	+295.0%
Ling Tempco Vaught	58	17¼	48¼	+ 30¾	−70.3%	+175.7%
Pan American Airways	55⅝	25¼	51⅛	+ 22⅝	−54.6%	+ 79.4%
Pennsylvania Railroad	65	35⅛	64⅜	+ 25¾	−46.0%	+ 66.7%
Polaroid Corp.	130	44¼	116⅝	+ 70¾	−66.0%	+154.2%
RCA Corporation	50½	31	47¼	+ 13⅜	−38.6%	+ 39.5%
United Airlines	118⅝	58⅝	104¾	+ 45½	−50.6%	+ 76.8%
White Consolidated Ind.	49½	17⅜	48¾	+ 30¾	−64.9%	+170.8%
Xerox Corp.	215	94⅞	202	+103⅜	−55.9%	+104.8%

RANGE IN AVERAGES

	12/31/64	High		Low	12/31/65
Dow Jones Industrial Average	874.13	969.26		840.59	969.26
Percent Change High to Low			−13.3%		
Standard & Poor's 500 Index	84.75	92.63		81.60	92.43
Percent Change High to Low			−12.0%		

SOME PRICES AS OF MAY 12, 1975, OF SELECTED COMPANIES LISTED ABOVE**

Chrysler Corp.	12¼	
W. T. Grant	9½	(Adjusted for 2 for 1 Split—1966)
Grolier, Inc.	6	(Adjusted for 2 for 1 Split—1966)
Pan American Airways	9¾	(Adjusted for 2 for 1 Split—1967)
Pennsylvania Central	1⅝	
Polaroid Corp.	63¼	(Adjusted for 2 for 1 Split—1968)
RCA Corporation	17¾	
UAL, Inc. (United Airlines)	42	(Adjusted for 2 for 1 Split—1966)
Xerox Corp.	258¾	(Adjusted for 3 for 1 Split—1969)

*Source—New York Times—Monday, January 17, 1966.

**May 12, 1975; prices have been adjusted for additional shares received as a result of stock splits.

APPENDIX A–3

TABLE III
SELECTED STOCK RANGES DURING 1974*

Name of Company	High	Low	Close	Change Open to Close	Percent Change High to Low	Percent Change Open to Close
ACF Industries	61¼	28¾	33	−24⅞	−53.0%	− 43.0%
Addressograph-Multigraph	11¾	3	3⅜	− 6½	−74.5%	− 65.8%
Citizens & Southern Realty	31¾	2	2⅝	−26¾	−93.7%	− 91.1%
Chrysler Corp	20⅛	7	7¼	− 8⅜	−65.2%	− 53.6%
Coca Cola Co	127¾	44⅝	53	−73½	−65.1%	− 58.1%
Combustion Engineering	106¼	21⅝	26¼	−78¾	−79.6%	− 75.0%
Consolidated Edison	21½	6	7½	−11¼	−72.1%	− 60.0%
Continental Illinois Corp	59¼	23¼	26⅝	−25¼	−60.8%	− 48.7%
Cousins Mortgage	23¾	1⅛	1⅜	−18⅞	−95.3%	− 93.2%
E. I. duPont	179	84½	92¼	−66¾	−52.8%	− 42.0%
Eastman Kodak	117½	57⅝	62⅞	−53⅛	−51.0%	− 45.8%
Equity Investments	23¾	1⅛	1⅜	−18⅞	−95.3%	− 93.2%
Fidelity Mtge. Invest	10¼	9/16	15/16	− 5 15/16	−94.5%	− 86.4%
Foster Wheeler	64½	13	15⅛	−45	−79.8%	− 74.8%
Holly Sugar	39	12⅛	26¼	+13¾	−68.9%	+110.0%

Name of Company	High	Low	Close	Change Open to Close	Percent Change High to Low	Percent Change Open to Close
Honeywell, Inc.	86¼	17½	21	−49⅛	−79.7%	− 70.1%
Moore McCormack Resources	34¼	12⅜	28½	+15¾	−63.9%	+123.5%
RCA Corporation	21½	9¼	10¾	− 7¾	−57.0%	− 41.9%
Stone & Webster	89⅞	31½	33⅜	−56	−65.0%	− 62.7%
Tri South Mtge. Investors	27¼	2	2¾	−21⅛	−92.7%	− 88.5%
Union Camp Corp	63	37¼	38⅞	−20⅜	−40.9%	− 34.4%
Union Carbide	46	31¾	41⅜	+ 7¼	−31.0%	+ 21.3%
Xerox Corporation	127⅛	49	51½	−71¼	−61.5%	− 58.0%
Great Western United	31¼	3⅛	24¼	+20¾	−90.0%	+592.9%
Great American Mortgages	32	1	1⅛	−28⅞	−98.8%	− 96.3%

RANGE IN AVERAGES

	12/31/73	High		Low	12/31/74
Dow Jones Industrial Average	850.86	891.66		577.60	616.24
Percent Change High to Low			−35.2%		
Standard & Poor's 500 Index	97.55	99.80		62.28	68.24
Percent Change High to Low			−37.6%		

*Source—Richmond Times-Dispatch, Sunday, January 5, 1975—For Stock Ranges Only.

TABLE IV

WALL STREET JOURNAL

Friday, May 16, 1975

Daily Percentage Leaders On N. Y. Stock Exchange

NEW YORK—The following list shows the stocks that have gone up the most and down the most based on percent of change on the New York Stock Exchange regardless of volume for Thursday. Net and percentage changes are the difference between the previous closing price and yesterday's last price.

UPS

	Name	Sales (hds)	High	Low	Last	Net	Pct.
1	Welbilt Cp	56	1¼	1	1¼	+ ¼ Up	25.0
2	Int T&T pfF	1	68	68	68	+ 8 Up	13.3
3	IDS Rlty Tr	293	5⅜	4⅞	5⅜	+ ⅝ Up	13.2
4	Centrn Data	811	19½	17⅜	18⅝	+ 1¾ Up	10.4
5	Texfi Ind	13	5⅜	5¼	5⅜	+ ½ Up	10.3
6	Heler Int pf	2	121¼	121¼	121¼	+11¼ Up	10.2
7	CCI Corp	9	1½	1½	1½	+ ⅛ Up	9.1
8	Royal Ind	150	4⅞	4½	4⅝	+ ⅜ Up	8.8
9	vj Readg Co	58	3¼	3⅛	3⅛	+ ¼ Up	8.7
10	Rockower	50	9⅝	8¾	9½	+ ¾ Up	8.6

DOWNS

	Name	Sales (hds)	High	Low	Last	Net	Pct.
1	Falstaff	178	4	3⅜	3⅜	— ⅞ Off	20.6
2	SeabCst Lin	2825	24⅜	22⅝	23¾	— 4⅝ Off	16.3
3	Emp 4.75pf	z100	4¼	4¼	4¼	— ⅝ Off	12.8
4	Bulova Wat	77	8½	7½	7½	— 1 Off	11.8
5	LehVallnd	32	1¼	1⅛	1⅛	— ⅛ Off	10.0
6	Adams Drg	116	3⅞	3½	3½	— ⅜ Off	9.7
7	Benguet B	226	2¾	2½	2½	— ¼ Off	9.1
8	ChaseMTr	325	4⅛	3¾	3¾	— ⅜ Off	9.1
9	Plan Resrch	212	4⅜	3⅞	3⅞	— ⅜ Off	8.8
10	Xerox Cp	3350	87	78½	78⅝	— 7⅞ Off	8.8